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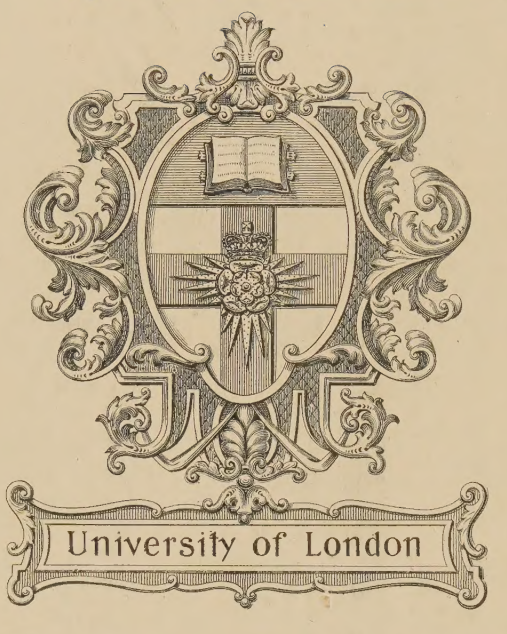

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COPIES

OF THE

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

[*Presented to Parliament in pursuance of the Act* 3 & 4 *Will.* IV. *c.* 85, *s.* 54.]

East India House,
29 July 1844.

JAMES C. MELVILL.

Ordered, by The House of Commons, *to be Printed,*
9 *August* 1844.

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1.	1 Oct. 1842 - 8 — — 24 Dec. — 25 March 1843 Ditto -	- - Proposed law concerning the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.	21 April 1843 (Nos. 42. 44. 49, 50, and 52.)	- - - -	- Des. No. 20 of 1843, dated 11 November.
2.	7 Jan. 1843 -	- - Forwarding copy of the Governor-general's Instructions, upon which their Report on the Civil Service was furnished.	27 January 1843 (No. 23.)	- - - -	- - Des. No. 2, dated 27 January 1843.
3.	17 May 1843 -	- - On the Judicial Establishments of the Presidencies of Bengal, Madras, and Bombay.	5 July 1843 (No. 14.)	- - - -	- - Des. No. 2, dated 15 Jan. 1844, p. 25.
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6.	11 July 1843 - 4 Nov. —	- - For rendering Europeans amenable to the Criminal Law administered in the Mofussil.	- - First letter recorded, 13 July 1843 (No. 4.) Report not yet recorded.	—	—
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East India House,
29 July 1844.

David Hill,
Assistant Examiner of India Correspondence.

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

— No. 1. —

No. 1.
Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

PROPOSED LAW CONCERNING THE ACQUIREMENT AND EXTINCTION OF RIGHTS BY PRESCRIPTION, AND FOR THE LIMITATION OF SUITS.

[*Note.*—The last Document connected with the subject of these Papers is contained in the Special Reports of the Indian Law Commissioners, ordered by the House of Commons to be printed, 30th May 1843, p. 47.]

(No. 263.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general, dated Fort William, 28th October 1842.

Legis. Cons. 28 Oct. 1842. No. 29.

Sir,

YOUR letter, dated the 22d ultimo, forwarded a despatch, No. 1563, of the 18th August last, from the Secretary to the Lieutenant-governor, N. W. Provinces, on the subject of the proposed Act regarding rights by prescription, written in continuation of his letter of the 26th July, but it does not appear that either the original or transcript of the despatch of July has been ever forwarded to the Presidency. I am directed, therefore, to request that, with the permission of the Right honourable the Governor-general, you will transmit a copy of that despatch for the information of the Honourable the President in Council.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. 82.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, dated 28th October 1842.

Legis. Cons. 28 October 1842. No. 30.

Sir,

IN continuation of my letter, No. 60, dated the 5th August last, I have the honour, by direction of the Honourable the President in Council, to transmit to you for submission to the Law Commissioners, the accompanying despatch in original, dated 22d ultimo, from the Secretary to the Government of India, with the Governor-general, containing opinions of certain functionaries in the North-west Provinces on the proposed Act regarding rights by prescription.

2. You are requested to return the original enclosures when no longer required.

I have, &c.
(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. of 1842.)

Legis. Cons. 21 April 1843. No. 40.

From the Secretary to the Government of India, with the Governor-general, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department, Fort William; dated Simla, 22d September 1842.

Sir,

I AM directed by the Governor-general to transmit, for the information of his Honor the President in Council, the accompanying despatch, No. 1563, dated 18th ultimo, from the Secretary to the Government, North-western Provinces, on the subject of the projected new Act regarding rights by prescription.

I have, &c.

(signed) *T. H. Maddock*,
Secretary to the Government of India, with the Governor-general.

(No. 1563 of 1842.)

Legis. Cons. 21 April 1843. No. 41. Enclosures.

From *R. N. C. Hamilton*, Esq. Secretary to the Government, North-western Provinces, to *T. H. Maddock*, Esq., Secretary to the Government of India, Legislative Department, with the Governor-general, dated Agra, 18th August 1842.

Sir,

* Copies of Letters from —
Messrs. H. H. Thomas,
— H. B. Harington,
— D. B. Morieson,
and
— A. W. Begbie.

I AM directed by the Lieutenant-governor, in continuation of my letter of the 26th ultimo, to forward for the consideration of the Governor-general, the papers noted in the margin *, on the subject of the projected new Act regarding rights by prescription.

2. The first passage in the correspondence to which it is desirable to draw attention is, the 20th paragraph of the letter from Mr. Harington, whose remarks on the necessity of simplifying the wording of the projected Act, to render it intelligible to either judges or parties in these provinces, have the Lieutenant-governor's entire concurrence.

3. Indeed, his Honor is compelled to confess that there are whole passages in the draft, such as the concluding provision of the 1st section, and the whole of the 5th and 9th sections, that have baffled his own most earnest endeavours to attain to a clear comprehension of their real meaning.

4. Now, as laws are intended for the protection of the simple, it is useless to clothe them in terms beyond the power of any simple understanding to comprehend; and therefore, as well as to bring it within the compass of translation, it is, in the opinion of the Lieutenant-governor, absolutely necessary that the draft should be recast, before it be suffered to pass into a law.

5. With regard to the provisions, the Lieutenant-governor is inclined to think that Mr. Thomason's view is correct; and that, if the proposed enactment does not prove destructive of the established rights of the agricultural community in Putteedaree villages, it will only be because of its complexity soon rendering the whole a dead letter. The Lieutenant-governor is averse to all superfluous legislation at a moment like the present, when the people, recovering from the agitation caused by the settlement, are anxiously looking for that rest, of which they were assured that the brief troubles of that season were the immediate forerunners.

6. The Lieutenant-governor can assert with some confidence, upon the strength of his own judicial experience, that the existing laws, if properly administered, are amply sufficient for the wants of the people of these provinces, his own acquaintance with whose language also warrants his pronouncing the draft now submitted to be, in its present form, unsusceptible of intelligible translation.

7. The first wish of the Lieutenant-governor is, therefore, that the project should, in as far as these provinces are concerned, be abandoned altogether; but if this may not be, he would then earnestly recommend that a revised version, in plainer

plainer and more intelligible language, may be sent up for previous circulation, his Honor seeing reason to apprehend that the merits of the several provisions cannot, until this be done, be generally and sufficiently understood by those whose opinions are required.

I have, &c.

(signed) *R. N. C. Hamilton,*
Secretary to the Government, N. W. Provinces.

(No. 1, in 1563 of 1842.)

From *H. H. Thomas*, Esq. to *R. N. C. Hamilton*, Esq. Secretary to the Government, N. W. Provinces, Agra; dated Agra, 2 August 1842.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, dated the 31st May, with draft of a proposed "Act concerning the acquirement and extinction of Rights by Prescription, and for the limitation of Suits in the Courts of the East India Company," and to submit the following remarks:

2. The provisions of this Act appear to me generally calculated to discourage vexatious litigation, and to give stability to the possession of property; I think, moreover, that in the course of time their effect would be to render the natives stricter and more punctual in their dealings with each other.

3. The words, "or with reasonable diligence might," in sections 8 and 16, might advantageously be struck out, because the law could hardly sanction the continued possession of property obtained by "fraud," after the detection of such fraud, on the mere plea that the deprived party had not used "reasonable diligence" to make himself acquainted with it; and because the discovery of "a concealed fraud" is more likely to result from an accident, than from any particular "diligence" on the part of individuals, however interested.

4. I have nothing further to suggest on this occasion, and beg to return the draft.

I have, &c.
(signed) *H. H. Thomas.*

(No. 2, in 1563 of 1842.)

From *H. B. Harington*, Esq. Officiating Judge of Jounpore, to *R. N. C. Hamilton*, Esq. Secretary to the Lieutenant-governor, North-western Provinces, Agra; dated Jounpore, 3 August 1842.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 1001, under date the 31st May last, with its enclosed copy of a proposed Act for amending the law with respect to the limitation of suits, and of the Report of the Law Commissioners, submitting the same for the consideration of Government.

2. Previously to the receipt of your letter, I had seen the draft of the proposed Act on its publication in the Government Gazette, and intended, as soon as I could command sufficient leisure, to give it a more attentive study. Amidst the incessant demands, however, on a judge's time and thoughts, which the duties of his office impose, it is rarely that he can command that degree of leisure from urgent business, or that freedom of thought from other matters, which are so essentially requisite to enable him to sit down calmly and deliberately to consider an important measure of this nature, and carefully to weigh it in all its bearings. I have found this to be more particularly the case since I have been in charge of my present appointment, the duties of which are of a very harassing nature, while latterly I have been a sufferer in health, and I trust that these circumstances will be allowed in some degree to plead my excuse for the length of time that I have taken to reply to your letter under acknowledgment. I may also mention, that on the publication last year, in the Government Gazette, of the draft of an Act, of

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which the present is a modification, and in its provisions a very considerable extension, I drew up a few rough notes on the subject of it, which I forwarded to Calcutta.

3. In considering the present draft, I have found the Report of the Law Commissioners of great assistance, as showing the reasons by which they have been influenced in their proposed modifications of the law as it now stands, and I am very glad to have had the opportunity of seeing that paper.

4. The first point for consideration appears to be, whether sufficient grounds exist for any alteration of the present statute or rule of limitations; the second, whether the amendments proposed by the Law Commissioners are calculated to remedy the defects with which the operation of the existing law may be found to have been attended, and which render a modification of it expedient.

5. On the first point, I believe I only express the sentiments of all those who have considered the subject, and who have had an opportunity of watching the operation of the present law, and of witnessing the serious injury and positive injustice frequently occasioned by the great length of time allowed by it for bringing civil actions, particularly for real property, in cases instituted under the provisions of section 3, Regulation II. of 1805, when I say that a considerable reduction of that period has long been loudly and imperatively called for.

6. One of the most mischievous consequences of the long time now allowed for bringing suits, is the gross perjury, and it might be added, forgery, to which it has given rise, and which would of itself, in my opinion, render a modification of the law not only advisable, but absolutely a duty on the Government. Who is there that has ever presided in a court of justice in this country, who has not been struck with amazement to hear rude ignorant men, immediately after solemnly calling on their Creator to bear witness to the truth of that which they are about to depose, relate circumstances that took place upwards of half a century before, when they were comparatively children, with a degree of minuteness and specification, and with a coincidence in the testimony of the several witnesses, which your own memory assures you could not have been possible, had the facts related happened only as many months, or even weeks before, as they were stated to have occurred years; if any doubt be entertained on the point, let the evidence of a respectable witness in a criminal case which occurred only a few weeks before the deposition was given, be compared with the evidence in a civil suit, where the cause of action may have arisen many years before, and the infirmity of the memory of man, when called upon to speak to facts, in the one case, and its wonderful retentiveness in the other, will stand forth in remarkable contrast to each other.

7. Again in suits for debts, whether upon bond or simple contract, scarcely a day passes without witnessing similar instances of perjury, where men are produced to give evidence to bonds having been executed, or debts contracted in their presence, 10 or 12 years before, who, though having no interest in the matter of issue, scarcely an acquaintance with the parties, and who, according to their own account, happened accidentally to be passing at the time, and were called in to witness and sign the bond, or to be present at the payment of the money, solemnly depose to the most minute circumstances, describing without hesitation the different persons present at the time, the order in which each arrived and departed, the date of the month and year, the hour, the exact sum of money paid, who brought it, and who examined it, the description of rupees, though they may have been of various coinages, who furnished the stamp paper and where it came from, the order in which the witnesses signed, the conversation that took place, and various other particulars, not of a nature to make the least impression on the mind, and which the memory of a disinterested witness would not retain for a week, or a month at the outside, so as to admit of his deposing on oath with any degree of accuracy or certainty in regard to them. No legislative enactment could of course entirely remedy this state of things, but if the present rule of limitation has the effect of promoting and encouraging the crime of perjury, and its twin brother forgery, as, I think, will generally be admitted, a sufficient case has been made out for the interference of Government; and should the proposed Act pass into law, it may be hoped that one of the advantages that will result from its operation will be to check in a considerable degree the offences above mentioned.

8. Another defect of the present law appears to me to be the serious disadvantage at which it places the defendant in defending a suit brought after so long a period, particularly when he may be the son, or, as is not unfrequently the case, the

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the grandson of the person against whom the claim of the plaintiff lay, if it lay against any one.

9. To compel a man to defend his title to an estate after nearly 60 years of unmolested possession, and undisputed exercise of all the rights of ownership, during which he may have expended large sums of money in improving the property, when his witnesses are dead, and his title deeds may have been worn out by time, destroyed by fire, eaten up by insects, stolen, or mislaid from want of care, consequent on too great security, as to his right in the property, is a positive hardship: nor is the heir of the property, or a *bonâ fide* purchaser of it, in a much better position, for although the law will not allow his right to be inquired into, if he shall have held possession for 12 years, any period short of that, notwithstanding that the possession of his father, or the party from whom he may have inherited or acquired the property may have embraced a term of 30 or 40 years, will not avail to bring his case within the rule of limitations. I refer, of course, to cases instituted under section 3, Regulation II. of 1805, the general wording of which* admits of almost any suit for immoveable property being brought under it. What is the consequence? Knowing, or strongly suspecting the means to which his adversary will have recourse to establish his claim, he is unfortunately driven to adopt the same, in order that he may meet and defeat him with his own weapons.

* By violence, fraud, or *other* unjust and "dishonest means."

10. Without entering in this place into a discussion of the question, whether it is more for the interest of the people to discourage litigation in our courts, than otherwise, on which, I believe, considerable difference of opinion prevails, it appears to me that so long as our courts are open to all, and all are invited to enter who have wrongs to redress, the sooner that parties desirous of resorting to the established courts of justice for the settlement of their claims, are compelled to bring their suits, when all reasonable prospect of amicably adjusting the matter out of court is at an end, the better for all concerned. It is better for the honest plaintiff, who has thus the less chance of being deprived by death, or other cause, of the evidence of the witnesses who can best prove his claim, a consideration of no slight importance in a country like this, where the average of human life, particularly amongst those who usually appear in our courts as witnesses, is so short, while it will lead to his more speedily obtaining his rights; it is better for the defendant, to whom, no less than to the plaintiff, it will afford the readier means of defending the suit before death, or absence, shall have removed his witnesses, while by promoting the early decision of the case, it will relieve him from the anxiety and suspense which he cannot fail to experience, to the diminution of his comfort and happiness, and where the property in dispute may be real property, to the injury of the property itself, so long as the dispute remains undetermined, whether under actual litigation or not; it is better for the judge in placing before him a larger quantity of oral testimony, on either side, of a less conflicting and suspicious nature, and on which he may the more safely rely, from the circumstance of its having been given while the facts were of recent occurrence and fresh in men's memories, and from its, in some measure, deterring the parties from supporting their claims by forged documents, which must generally have been recently executed, and the forgery of which, therefore, would be the more easy of detection. In short, as regards plaintiff, defendant, and judge, it must have the effect of materially promoting the ends of justice, while it might easily be shown that it would generally diminish, to a considerable extent, the costs of litigation, particularly as respect claims for large sums of money, the accumulation of years of interest, rents, and mesne profits, which now swell so largely the amount of the claims preferred in our courts, and frequently render a case cognizable originally by the Principal Sudder Ameen, and in special appeal by the Sudder Dewanny Adawlut, and even by the Queen in Council, which, had it been instituted within a reasonable period after the cause of action arose, might have been disposed of in the first instance by the local moonsiff, or sudder ameen, and finally in appeal by the zillah judge.

11. On these and other grounds that might be adduced, a modification of the existing law of limitations, appears to me highly advisable, and indeed necessary; and I am disposed strongly to recommend, that the alterations proposed by the Law Commissioners be adopted as regards both the reduction of the time now allowed for bringing civil actions, and the periods which the Law Commissioners would substitute in lieu thereof for the different descriptions of suits mentioned in the proposed Act, and which, with the exceptions introduced by them, as respects

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infancy, idiotcy, lunacy, or absence under certain circumstances, appear, as far as I am able to judge, amply sufficient for the ends of justice, and well suited to the character of the different classes of suits.

12. With regard to the provision in the proposed new Act, for creating what is called a title by prescription, I hesitate to offer an opinion, not feeling myself sufficiently master of the subject to admit of my forming a satisfactory judgment on the merits of it. I may however be permitted to mention a case, recently before me, in which the advantage, and indeed justice of such a provision, to a *boná fide* occupant of property in the character of proprietor, will strikingly appear.

13. In the case referred to, the father of the present holder of the property, consisting of a house, took a lease of the same in the year 1788, and continued for some years to pay the rent agreed upon. After a time the owner died, and in 1817, the tenant purchased the property of his adopted son, and apparently only heir; a regular deed of sale was executed, and the tenant was generally considered to have become the proprietor by purchase of the property, in proof of which he pulled down the old house and built a new house in its place, at a very considerable expense. Strange, however, to say, after the purchase, he paid two months' rent, according to the original rate, to the adopted son of the former proprietor, that is to say, the party from whom he purchased; the payment was not denied, but it was pleaded that it must have been either on account of the balance of the rent of the year preceding the purchase, or that it was inadvertently made. Ten years after the alleged purchase, a party calling himself the nephew and heir of the former proprietor, appeared, and denying the right of the individual from whom the tenant purchased to sell, on the ground of his adoption being illegal, sued for 10 years' rent under the terms of the lease; his claim was dismissed by two of the judges of the Sudder Dewanny Adawlut, in opposition to the opinion of a third judge, chiefly on the ground that he had failed to establish the deed of lease on which his action was founded, though it may be observed that the deed was not denied by the defendant, his plea being that it was superseded by the subsequent deed of sale. The same party then brought a suit to recover possession of the house, and obtained a decree in the lower court, the plea of lapse of time urged by the defendant (the present action having been brought more than 18 years after the date of the alleged deed of sale) being overruled by reference to the terms of clause 4, section 3, Regulation II. of 1805, which provides "that no length of time shall be considered to establish a prescriptive right of property, or to bar the cognizance of a suit for the recovery of property, in cases of mortgage or deposit, wherein the occupant of the land, or other property, may have acquired, or held possession thereof as mortgagee or depositary only, without any proprietary right." The case was appealed to me, but I was saved the necessity of giving an opinion on the merits of it by the parties compromising the matter among themselves, the party in possession agreeing to pay the claimant a sum of money to forego his claim, and for a small piece of land adjoining the house in dispute.

14. In this case, there was little doubt that the adoption of the individual, from whom the father of the party in possession purchased the property, was illegal, and it was equally clear that he acquired possession of the property in the first instance as tenant or depositary only, without any proprietary right, tenants, I believe, being usually considered to be included under the general head of depositaries; but he and his son had held possession for so long a period without paying rent, and had so unquestionably exercised all the rights of ownership in regard to the property, as shown by their pulling down the house originally standing on the land, and erecting an entirely new and more valuable building in its place, that the impression on my mind was, that under the latter part of the clause, above quoted, and the general rule of limitations, the claim was barred by lapse of time, and so, I think, I should have ruled, had I been required to come to a decision. I should not, however, have felt at all certain of my view being upheld by the Sudder Court, particularly in reference to the payment of the rent after the execution of the deed of sale, and I suspect that it was the circumstance of this payment, which the appellant could not satisfactorily explain, that induced him to compromise the matter. Under the 1st section of the proposed Act, the occupant of the property in question would have acquired, and as I think very justly, an undoubted title by prescription, having held uninterrupted possession, as proprietor, for 12 years, and such possession having been clearly adverse to the title set up by the opposite party; unless the case should be considered as falling under

under section 19 of the proposed Act, in reference to the suit brought for rent within the period of 12 years after the alleged deed of sale, and which might be looked upon as a suit brought to interrupt possession. I can scarcely, however, conceive that it was the intention of the Law Commissioners that a suit brought to recover rent, whether of land, a house, or other premises, when the defence of the opposite party might be proprietary possession, and his proofs might go to establish his possession as proprietor, should be looked upon as a suit brought to interrupt possession falling within the meaning, and giving the plaintiff the benefit of the provision abovementioned, though the wording of the section is very general, while the words "or other cause" are large words, and the rest of the sentence, "shall have been unable to decide upon it," is somewhat vague and indefinite.

15. I shall now proceed to consider seriatim, and as briefly as possible, the different sections of the proposed Act, and to suggest one or two additions to meet cases, which, as it appears to me, have not been sufficiently provided for, as well as a few verbal alterations which may possibly have the effect of removing doubts that might arise, and facilitate the uniform working of the Act, should it pass into law.

Sect. 1.

16. In this section after the word "immediate" in the fourth line, for "as proprietor," I would substitute "in the character of proprietor, and in the exercise of all the rights of ownership." The object is to meet a case where a party may have held uninterrupted possession of property for a given number of years, and during that period may have been universally acknowledged as the proprietor, and have exercised all the rights of ownership, but whose title to the property may be defective, and if made the subject of an action at law, might not stand the test. In their remarks on this section the Law Commissioners make use of the term "as by virtue of a proprietary right." In the Regulations (clause 4, section 3, Regulation II. of 1805), we have the phrase "wherein the possession of the actual occupant, or of those from whom his occupancy may have been derived, shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor," the Persian phrase "Butour i Malik" would, I believe, exactly meet the intention of the framers of the law.

17. I do not perceive the exact bearing of the second proviso contained in this section, to which reference is apparently made in paragraph 12 of the Law Commissioners' Report. I have endeavoured to suppose a case, to which it might be applicable, and with a view to the like of which it may have been framed, but have not succeeded.

Sect. 2.

18. Some provision would appear necessary as to whether the deeds or writings, referred to at the conclusion of this section, are to be on plain or stamped paper, and in the latter case, of what value; the same remark applies to the written acknowledgments referred to in sections 7 and 14. So long as the stamp laws are continued, it is advisable that all such deeds or writings should be required to be written on stamp paper, as affording a greater security against forgery.

Sect 4.

19. At the end of the fifth line of this section, after the word "or" I would add "which may hereafter be enacted," as calculated to obviate the necessity of future legislation on the same point, and I would strike out the words "in one month," the law (section 4, Act 4 of 1840,) already fixing the time within which such applications must be preferred, or where it may not do so, as in cases falling under section 7 of the Act just quoted, it were better I think to amend the law.

Sect. 5.

20. With regard to this section, and the remark is of more general application, I think it is much to be desired that the wording of it should be simplified, and brought down more to the level of the understanding of the courts generally, by which the law will have to be administered. In legislating for the civil courts of this country, it appears to me that two circumstances should be kept prominently in view; the first, that at the best we are but rude judges, little skilled in those legal and technical refinements of language, which may do very well for the English courts of law, and the learned, and if I may use the expression, legally educated men who preside therein and compose the bar; and secondly, that as we administer the law chiefly in the native and not in the English language, of which more than nine-tenths of the judges entrusted with its administration are entirely ignorant, it has to be translated into two or more languages before it can come into operation, and it is most desirable, therefore, that all Acts intended for the use of the native courts should be expressed in the simplest and plainest language, and should be as free as possible from all technical terms, so as to admit not only

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of easy translation, but of the translator preserving in his translation the exact sense and literal meaning of the original law, otherwise we run the risk, as now indeed very often happens, of one law being administered by the European, and another by the native judge, simply from the difficulty experienced by the translator in conveying the true meaning and bearing of the English Act in his translation of it.

Sect. 7. 21. See remark on section 2 as regards the paper on which the written acknowledgments referred to in this section, should be required to be engrossed.

22. There is another description of suits falling under the head of mortgage, for which some provision requires, I think, to be made. To show the description of cases to which I refer, I will suppose a case. *A.* borrows 1,000 rupees from *B.*, and mortgages to him his estate under a deed of simple mortgage for five years, or afterwards until the mortgage is liquidated; it is agreed that *B.* shall hold possession of the property, and, after paying the Government revenue, and the ordinary village expenses, shall receive from the profits of the estate interest at the rate of 12 per cent. per annum, and that any balance that may remain shall be appropriated to the gradual liquidation of the principal of the debt. The gross annual collections of the estate amount to 600 rupees, of which 400 rupees go to the payment of the Government revenue and the village expenses, leaving a surplus of 200 rupees to be applied in the manner above described, *i. e.* in the payment of the interest and the liquidation of the principal,—at this rate the principal and interest of the debt would be liquidated about the end of the eighth year, and *A.* should then demand restoration of the property by the redemption of the mortgage, and should *B.* refuse to give up possession on the ground that the mortgage had not been satisfied, or on any other plea, *A.* has a cause of action, and should, I think, bring his suit for recovery of possession within the period ordinarily allowed for instituting civil actions: instead of which mortgagers frequently allow their claim to remain in abeyance for much longer periods, and after the lapse of perhaps 30 or 40 years institute a suit to recover possession, and for 20 or 30 years' mesne profits; when by the account filed by themselves, they must have been aware of the redemption of the mortgage at the date from which they claim all the profits of the estate, but I do not think that this should be allowed.

Sect. 8. 23. Although the provision contained in this section as regards the discovery or knowlege of a fraud, may be very reasonable, I fear that in practice it will be found extremely difficult of application, and that it may give rise to much abuse. The decision of the point as to when the party might with reasonable diligence have become acquainted with the fraud practised upon him, must almost always depend rather upon conjecture than actual proof, and a wide door may thus be opened for prolonging the period ordinarily allowed for bringing a suit; when a party may have been deprived of any right, whether by concealed fraud or otherwise, it may, I think, fairly be assumed that with common diligence he must discover the injury done to him during the comparative long periods of 6 or 12 years, as the property may be moveable or immoveable, except in cases of infancy, and such like, for which separate provision has been made.

Sect. 9. 24. The remark on section 5 is equally applicable to this section; it will be no easy matter for the translator to preserve or convey its meaning in his translation; in its English dress, it was some time before I could discover its bearing.

Sect. 11. 25. This section provides that suits for the rent of buildings shall be instituted within one year from the time the cause of action arose, but is silent as to the period within which regular suits for arrears, or connected with exactions of rent, should be preferred, nor can I find any provision expressly applicable to such cases in any other part of the proposed Act; it appears to me that they also should be required to be brought within a year from the date of the cause of action.

26. In the notes which I sent to Calcutta last year, I referred particularly to this class of cases, and described a not uncommon practice amongst the zemindars and other landholders, especially where they had become only comparatively recently possessed of the property by purchase, or mortgage, or in farm, of receiving their rents from the ryuts for a series of years at a certain rate, ostensibly as all that was due from them, and suddenly instituting a suit for a large sum of money, composed according to their account, of the balance of several years with interest,—in other words, being the difference between what the ryut had paid each year, and what the landholder declared himself entitled to receive, with the interest on each year's balance: the ryut all this time has been congratulating

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lating himself on his rent being regularly paid up, and that he owed his landlord nothing, when he finds himself unexpectedly plunged into an expensive law suit for a large arrear of rent, the accumulation of many years, which he is called upon to defend, perhaps at a considerable distance from his home, and at an outlay of money in the first instance, for the purchase of stamp paper, and to secure legal advice, which is quite ruinous to him: as the only alternative, he abandons the land to his landlord, whose only object in bringing the suit probably was to obtain possession of it, in order that he might lease it out to some other person at an enhanced rent or take it into his own cultivation. The landlords know full well that it is useless to attempt the recovery of the alleged arrear by means of a summary suit; the revenue authorities being expressly restricted to the object of enforcing payments of the rents paid in past years, and they therefore come to the civil court. They sometimes try to carry a payment made in one year to the credit of a former year's rent, and thus make the ryut, unknown to himself, liquidate the arrear of a previous year, alleged to have been due by him; but this ought not to be allowed, every payment made should be considered a payment on account of the rent of the year in which it was made, unless the zemindar should be able to produce a written agreement from the ryut, signed by the putwaree, and two credible witnesses, allowing it to be otherwise appropriated, and any arrear of rent remaining due at the end of any year should be sued for within a twelvemonth from the close of the year, or the claim for it should be considered barred by the Statute of Limitations.

27. In the same section provision is required to be made for suits brought to set aside summary orders of collectors and other officers of revenue, awarding restoration of possession of lands, under section 18, Regulation VIII. of 1819, to under tenants who may have been illegally ousted therefrom, or dismissing a claim brought to obtain such restoration, as well as where the party ousted may prefer instituting a regular suit, in the first instance, to having recourse to summary process in all these cases. I think the period of one year should be allowed for bringing the suit in the civil court, calculated in the former instance, from the date of the order of the revenue authority, and in the latter from that of the alleged ejectment: the Act as it now stands, does not appear to provide for these cases.

28. See remark on section 2, as regards the paper on which the writing herein referred to should be engrossed. Sect. 14, Cl. 1.

29. This proviso is very proper, and indeed necessary, to prevent the fraudulent practice, now so common, of making parties defendants in a suit merely to obtain from them a confession of judgment, to the prejudice of the other defendants, such acknowledgment unavoidably giving a colour of right to the plaintiff's claim. Where a plaintiff may sue two persons as jointly liable for a sum of money, and his claim against one of them may be barred by the Statute of Limitations, the case should, I think, be nonsuited, as having been instituted, as regards such defendant, against the Law of Limitations, and the plaintiff desired to institute his suit *de novo* against the party, alone, who was not protected by lapse of time, but this is perhaps rather a question of practice, and can be provided for hereafter. Cl. 2.

30. In a former part of this Report, paragraph 23, I have adverted to the difficulty that I fear will be experienced in determining what shall be considered a "reasonable diligence" in the discovery of a fraud, and in establishing by legal proof when by such diligence a fraud might have become known to the party wronged. Sect. 16.

31. In paragraph 14 of this Report, I have also remarked on the apparent vagueness of the term in this section, "or other cause shall have been unable to decide upon it,"—the same remark applies to section 24. Sect. 19.

32. It appears from the Report of the Law Commissioners that the proviso at the end of this section is intended to be general, and that infancy, absence, &c. are not to be excepted from its operation; but this, I think, had better be stated distinctly in the section, as persons not having the opportunity of referring to the Law Commissioners' Report might entertain doubts on the point. Sect. 21.

33. In the notes which I forwarded to Calcutta, I suggested the expediency of making the provision contained in this section the subject of a separate enactment, as preferable to giving it a place in the proposed new Act, which, with the single exception of this section, applies exclusively to the civil courts; a solitary provision of this nature having reference to another and quite a distinct class of Sect. 22.

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courts, runs a risk of being overlooked, when thrust, as this has been, into an Act, all the provisions of which relate to another department; the provision itself seems just and reasonable.

34. The present draft omits the provision contained in that formerly published, on the subject of execution of decrees, by which it was provided that every application for the execution of a decree, preferred after the expiration of one year from the time of passing the decree, should be considered as a new suit, and subject to the rules for regular suits and the stamp duties chargeable thereon.

35. The reasons for this omission are stated by the Law Commissioners in the 44th paragraph of their Report, at the conclusion of which they remark that it has occurred to them that it may be proper to fix a certain period of years after which process of execution shall not be allowed by the courts, while in the next paragraph they go on to say, "But the considerations upon which this seems advisable belong properly to the subject of insolvency," which the Law Commissioners state they are now investigating.

36. I would however observe, that any Act relating solely to insolvency that may be passed, must leave untouched a large number of cases of execution of decrees. I refer, of course, to decrees for possession of property, whether moveable or immoveable, which are in no way connected with the solvency or otherwise of the parties against whom they may be passed; and it certainly does appear to me highly desirable that some limitation of time should be fixed by law for the execution of such decrees, while I also consider 12 years too long a period. When a party may have applied to a court of justice for the recovery of property, and may have obtained a decree, I really think, that if he wishes to enforce the same through the instrumentality of the courts, he should be required to make application for that purpose within a reasonable period, to be fixed by law, and that failing to do so he should so far forfeit the advantages arising to him from the decree that it should not be susceptible of summary execution.

37. At present there is no law on the point. On the 8th April 1802 it was ruled by the Sudder Court that a decree not enforced during a period of 12 years and upwards, might be put in execution, on application for that purpose without a fresh suit, provided the party holding it explained satisfactorily the cause of the delay, and no valid objections were offered by the adverse party. On the 28th October 1813 the Court held, that "a decree not carried into execution at the time of its being passed, might be executed on application being made for that purpose within 12 years from the date of the decision, after calling upon the opposite party to show cause why the judgment should not be carried into effect against him; but that, should the party holding the decree neglect to make application for enforcing the judgment in his favour within the period above specified, the court were of opinion that the application ought not to be admitted without his establishing, to the satisfaction of the court, good and sufficient cause for the delay;" and again on the 27th February 1829, in reply to a question proposed to them, as to whether a suit instituted 14 years subsequent to the date of a moonsiff's decree was subject to the limitations prescribed by section 14, Regulation III. of 1793, the court ruled "that the cause of action in the case in question must be held to have arisen on the expiration of one year after the date of the decree, and the court stated they were not aware of any sufficient reason for excepting the case from the general rule furnished in the section above cited, by which the judge should be guided accordingly, leaving the party dissatisfied to appeal from his judgment in the ordinary course, and that consequently a suit instituted for the execution of a decree 14 years after the date of it, unless satisfactory cause could be shown for the delay, was inadmissible under the above rule cited;" while in the case of Juggernath Pershad Sircar appellant *versus* Radhanath Sircar and others, reported at page 280, volume 2, of the Sudder Dewanny Adawlut Reports, the court observe that it appeared that the decree of which execution was sued out was founded on a "soolenameh," which was denied by the appellant, and as the decree had not been carried into execution for so long a period (upwards of 13 years from the date thereof), they determined that it was neither just nor agreeable to the practice of the court to carry it into execution.

38. In the course of last year application was made to me, for the first time, to execute a decree for a piece of land, upwards of 50 years after the date of the decree. The party who applied to my court was not the original decree holder, but had purchased the decree from the sons of the parties in whose favour it was passed, and there could be no doubt that his sole object in making the purchase

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and in suing out execution, was to annoy the parties against whom the decree was passed, and to revenge himself on them for an injury which he considered that he had received at their hands. I refused the application on the ground of lapse of time, resting on the precedent in the case of Juggurnath Pershad Sircar above referred to; the party appealed to the Sudder Court, but they declined to interfere.

39. My decision in the case above mentioned, as well as the different constructions that I have quoted, was based solely on the equity of the case, and, as before observed, I could not have cited any law in support of it, while I have heard of applications for the enforcement of decrees, made for the first time after the lapse of more than 12 years from the date of the decree being complied with; I certainly think, therefore, that in passing a new rule of limitations as regards regular suits, the opportunity should be taken of fixing by law a reasonable period for preferring applications for the execution of decrees, after which, as remarked by the Law Commissioners, process of execution should not be allowed by the Courts.

40. The only remaining part of the proposed new Act, which I purpose noticing before bringing this already long Report to a close, is section 29, by which it is enacted "that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of the Act, shall be tried and determined as if the Act had not been passed." The use of the word "passing" in this section will give rise to a doubt, whether the date of the passing of the Act in Calcutta, or of its receipt and promulgation in each district, is to be considered as fixing the period for which it must be held to have been in operation; in the former case, a great advantage will be given to the people residing immediately in the neighbourhood of Calcutta over those at a distance, who will not know of the actual passing of the law until it has been some time in operation; the rule now is that a Regulation is considered as in force from the date of the receipt of the English copy, or of the Government Gazette containing a copy of it, whichever may be received first, and I would suggest that the same rule be observed as regards the promulgation of the Act under consideration, in order that the full period of six months may be allowed indiscriminately to the residents of all parts of India, whether of Seharunpore, Hooghly, or elsewhere, for bringing their suits in conformity to the provision of, and under the penalty involved in the section in question. Each zillah judge should be required to report to the Court of Sudder Dewanny Adawlut the date of the receipt of the Act by him, which will be considered the date of its promulgation in his district, so that no doubt may afterwise arise on that point; and in order that the people may not be taken by surprise, an approved translation of the Act should accompany the English copy, and proper measures should be adopted for giving it publicity; if this is not done, months may elapse before the translation appears, and the time allowed by the Act for bringing depending claims may expire before the people have had the opportunity of becoming acquainted with the provisions of a measure so seriously affecting their interests, and a disregard of which may entail on them the most ruinous consequences.

(signed) *H. B. Harington,*
Officiating Judge.

(No. 3, in 1563 of 1842.)

From *D. B. Morrieson,* Esq. Officiating Commissioner, Fifth Division, to *R. N. C. Hamilton,* Esq. Secretary to the Lieutenant-governor, North-western Provinces, Agra; dated Benares, 5th August 1842.

Sir,

I HAVE had the honour to receive your letter, No. 1001, of the 31st May last, with its printed enclosures, on the subject of an amendment of the law with respect to the limitation of suits in the city and mofussil courts, and the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company, without the local jurisdictions of Her Majesty's courts at Calcutta, Madras and Bombay, and in the Straits settlements.

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2. I am fully aware of the importance of the subject therein discussed, and I learn for the first time that there is a considerable difference in the law prevalent within the different presidencies on these points. I have long had great doubts of the possibility of forming any general code of civil law which would be applicable to all parts of the Indian continent; in fact, local usages and long established customs have fixed civil rights and titles so firmly, and at the same time so differently in many places, that to attempt to bring them all under one comprehensive system, would be productive of great injustice, if not of a convulsion in the structure of the native community and intercourse, which would lead to any but beneficial results. I am inclined moreover to think, that questions of such a general nature as those now under discussion, may form legitimate objects of comprehensive legislation, and as everything that tends to render the definition of rights more distinct must be more advantageous, I am not disposed to cavil at the form in which the proposed Act is presented to our view.

3. The distinction made between positive and negative prescription, however legally correct in the abstract, is in fact a refinement of the law, which it may be difficult to make palpable to the generality of our native subjects, for if no one can contest a right acquired by prescription, that right is to all intents and purposes a valid and indisputable one. To argue that because the law does not specially recognize such a right, it does not exist, is surely special pleading; for if the claims of any other person be barred and cannot be enforced, it seems to follow, one would think, as a natural sequence, that the right of the actual possessor is sufficiently secured.

4. I am ready to allow that the Regulations in these provinces about limitations are too loose. To any one accustomed to deal with such questions, this must be at once apparent, and in very many instances the question as to whether or not a suit is cognizable by the courts must rest, not upon the letter of the law, but upon the construction which the judge trying it may put upon the law. The proposed Act condenses and brings together the different kind of suits and the term within which each must be brought forward, and I think that in this respect there will be a decided advantage in the enacting of the proposed statute.

5. There are only a few points upon which I have any particular remarks to offer. The first is regarding summary decisions of civil courts, which are open to subsequent further adjudication in regular suits. It is proposed, that after a summary inquiry has been made and a decision passed upon it, the party dissatisfied should be barred of his remedy if he does not institute a regular suit within the period of one year, to be reckoned from the date of the first decision, or of the decision in appeal, if an appeal has been preferred. This, it is stated, "appears to be expedient, in order that the suspense of the party in whose favour the court's summary award has been given, may be early terminated, and that he may either be assured in the possession which he holds under that award, or warned to defend it against a definite claim." Would not this desirable object be more easily attained, if the court giving the summary award were authorized to grant a period, not exceeding in any case a year, for dissatisfied parties to bring forward regular suits to contest such summary award? Generally speaking, from one to six months will be an ample allowance of time, and the sooner the state of suspense deprecated by the Law Commissioners can be terminated, the better for all parties concerned.

Cl. 1 sec. 11.

6. The second is regarding suits for the recovery of legacies, for bringing which a period of 12 years has been allowed, "because legatees may often remain in ignorance of the bequests made to them, without there being any reason to infer laches on their part, since executors are under no obligation to seek them out and apprize them of the benefit they have become entitled to." Would it not be expedient to make it obligatory on executors, on all practicable occasions, to seek out and apprize legatees, and to authorize a deduction for costs or expenses attending notifications and proceedings, from the amount of the legacy?

Cl. 1, sec. 11.

7. A third point regards the proviso, that suits against trustees "shall not be barred by any length of time." I would respectfully suggest that "trustees, or their heirs or successors," be inserted, if it be not intended to restrict the proviso to the persons of the original trustees only.

Sec. 12.

8. Fourthly. It has been thought that an interval of five years on account of absence out of the territories of the East India Company and the contiguous territories, and the island of Ceylon, is quite a sufficient allowance for claimants

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in computing the periods of prescription. So it is in all ordinary cases where such absence may depend upon the will of the claimants; but I think an exception ought to be made for all time that may so elapse in cases of absence on military service by military men, or men in public employ. Many of our soldiers and other public employees have been away in Affghanistan and China for nearly that period already, and several years may possibly elapse ere they can return. Such absence cannot be justly alleged to depend upon their will, and it would be very hard if they were to be barred by such a statute of limitation from suing on their return for any private rights that would otherwise be rendered void by reason of such involuntary absence on public duty of the state, if no special exception be made in their favour in the new law.

9. I need not detain you with any further observations, as I have a favourable opinion of the proposed law generally, and think that practical benefit may be reasonably expected to result from its enactment.

I have, &c.
(signed) *D. B. Morrieson,*
Officiating Commissioner, Fifth Division.

(No. 4, in 1563 of 1842.)

From *A. W. Begbie,* Esq. Judge of Meerut, on leave, to *R. N. C. Hamilton,* Esq. Secretary to the Government, North-western Provinces, Agra; dated Loudour, 5 August 1842.

Sir,

I HAVE the honour to acknowledge the receipt of your letters under date 31st May and 26th ultimo, calling for my opinion relative to the proposed law regarding the acquirement and extinction of rights by prescription; and in reply beg to state, that the contemplated enactment appears to me highly expedient and calculated to repress litigation.

I have, &c.
(signed) *A. W. Begbie,*
Judge of Meerut, on leave.

REPORT from the Indian Law Commissioners, to the Honorable the President of the Council of India in Council, dated 1st October 1842.

HAVING given the most attentive consideration to the opinions expressed in the letters transmitted for our information by order of your Honor in Council, under date the 5th August, we have now the honour to submit an amended draft of an Act concerning the acquirement and extinction of rights by prescription, and for the limitation of suits in the established courts of justice in the territorities subject to the government of the East India Company, and to report as follows.

From Mr. Halliday, Officiating Secretary to Government of India.

2. The majority of the Judges of the Supreme Court at Calcutta, and both the Judges of the Supreme Court at Madras, concurring in our recommendations for the enactment of a positive prescription, and for the establishment of common rules of limitation, in respect of time, for suits in Her Majesty's Courts and in those of the East India Company, and having consented to the period of 12 years proposed by us as the longest term, we have altered the Act so as to give it effect within the local jurisdiction of Her Majesty's Courts, to which in the former draft it was declared not to be applicable.

3. In section 8 of our former draft we proposed that prescription should be allowed in favour of a party succeeding to the possession of property originally acquired by a concealed fraud, by inheritance or devise from the fraudulent party, to run from the time of the succession, instead of from the date of the discovery of the fraud according to the general rule laid down. We explained in our Report that although in this provision we had gone beyond the Statute,* we had not gone so far as the existing laws of Bengal and Bombay. What we suggested was indeed a compromise between them. Upon a re-consideration of the

* 3 & 4 Will. 4, c. 27, sec. 26.

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point with reference particularly to the observations of the Judges of the Supreme Courts at Calcutta and Madras, we have deemed it advisable to omit this exception from the general rule.

4. We have re-cast the section and have introduced it as a proviso to section 5. As it stands, it is a restriction upon that section in the case of a concealed fraud, declaring that prescription shall not run against a party deprived of property by such a fraud until after the discovery of it by him, except when the possession is held by a *bonâ fide* purchaser for valuable consideration, in which case it will of course run according to section 5.

5. By the law of England, when a good legal title has been gained by fraud, as when a party, being the lawful owner of an estate, has been led by deceit unwittingly to convey it to another person by a deed valid at law, and when a third person has purchased the estate upon that title *bonâ fide* and for valuable consideration, the conveyance cannot be set aside at law or equity, and the defrauded party has his remedy only by an action of damages against the person who defrauded him. The purchaser having a good title by deed has no occasion to set up a title by prescription. The provision we are considering therefore will not apply to such a case arising within the jurisdiction of Her Majesty's Courts. But it will probably apply to a similar case arising within the jurisdiction of any of the Company's Courts. For there, we apprehend, the defrauded party would be entitled to recover the estate, on the ground of the want of equity in the transaction between him and the person to whom he gave the conveyance, which would be set aside by reason of the fraud, as it would be by an English court of equity if the possession were not transferred to a *bonâ fide* purchaser. A *bonâ fide* purchaser therefore in such a case within the jurisdiction of the Company's Courts would have no title unless the lapse of time enabled him to claim title by prescription.

6. We think that a *bonâ fide* purchaser under such circumstances ought to have, by the law administered in the Company's Courts, the same protection which the law of England affords him, but it does not seem to us to be fitting to legislate on this point in an Act whose object is merely to fix certain periods of time for the establishment of positive and negative prescription.

7. We explained in our report that in the case of trust property we did not allow a prescriptive title to be acquired by possession for any length of time except by a *bonâ fide* purchaser for valuable consideration. The provision on the subject was contained in section 6 of the former draft, and will be found in section 7 of the present one. We entirely agree with the Chief Justice at Calcutta, that the enactment of a limitation in favour of the heir or devisee of a fraudulent trustee would be objectionable, and we did not intend any such enactment. In the case of a concealed fraud by a trustee (which seems to be the case contemplated by the Chief Justice) it is true that the heir or devisee is not on the ground of the fraud excluded from the exception in section 8, but on the ground of the trust he is, by the existing law, incapable of adverse possession, and is not rendered capable of it by section 6, which is confined to the case of a *bonâ fide* purchaser.

8. We have thought it proper to introduce a new section, to declare that a plaintiff shall not be barred in any suit for property or rights except when an adverse title shall have been acquired, or the right claimed shall have been extinguished by prescription.

9. A party may have been out of possession of property to which he is entitled beyond the period of prescription, yet no other party may have had possession adverse to him for a time long enough to give such party a title by prescription; in such case there is no reason why the rightful owner should be barred from a suit to recover his property, however long the time may be since he was deprived of possession, or acquired the title which makes him the rightful owner. For example, *A.* may be the rightful owner of certain land, but first *B.* may have wrongfully taken possession and held the land for 10 years, then *C.* may have ousted *B.* and held possession adversely to him for 10 years more; neither *B.* nor *C.* having gained a title by prescription, *A.* should not be barred of his right notwithstanding the lapse of 20 years. He should be at liberty to sue for the recovery of his property from *C.*, who has no title to oppose to him. Property which has once had a lawful owner should never cease to have one. The right therefore of one owner should never cease till the right of another commences.

10. A provision of this nature is necessary to guard against the application of the

the existing laws of limitation, which are intended to be superseded by this Act, though not expressly repealed by it.

11. The Chief Justice at Calcutta has suggested that there should be a distinction, in reckoning periods of limitation, between acquisitions by concealed fraud of goods and chattels and similar acquisitions of immoveables. In the former case he thinks the limitation should date from the discovery of the possession, and not from the discovery of the fraud, nor from the time of the possessor's acquisition. He suggests also that the *bonâ fide* purchaser of goods and chattels for valuable consideration without notice, should be as fully protected as the purchaser of immoveable property under similar circumstances.

12. There is a provision in the proposed Act that nothing contained in it shall be construed to affect any right arising from possession of moveable property now recognized by law. This was meant, as explained in the Report, to preserve the rights which the mere fact of possession already gives until an adverse title shall be proved, and sometimes against an adverse title, as in the case of goods and chattels purchased in market overt, mentioned by Sir L. Peel. We agree with the Chief Justice in thinking that the protection which the English law now gives is precarious and too narrow, but we do not feel quite sure that it can safely be extended. On the present occasion we do not think it necessary to give a determinate opinion as to the change in the law on this point which it might be advisable to make, as the question has no reference to time, and therefore does not fall properly within the scope of the proposed Act. Sec. 1.

13. Upon the suggestion of reckoning the period of prescription in the case of moveables acquired by concealed fraud from the discovery of the possession, instead of the time the fraud becomes known, it is to be observed that the discovery of moveables of which a person is defrauded, if not made soon after the fraud becomes known, is seldom made at all; moreover, the inquiry as to when the possession might have been discovered by reasonable diligence, which by the supposition must have been at a longer distance of time from the commission of the fraud than the discovery of it, would often lead to much conflicting testimony, and would, we apprehend, but seldom be attended with a satisfactory result; we are not prepared therefore to recommend that this suggestion be adopted.

14. Upon consideration of the remarks of the Chief Justice at Calcutta, concurred in by Sir H. W. Seton, and in deference to their opinion, we have deemed it expedient to allow the longest period of limitation, viz. 12 years, in the case of specialties, and debts or obligations of record; and we have placed upon the same footing all such written securities for the payment of money as are attested by a witness

15. This will include the bonds in use among natives, which, as observed in our Report, cannot at present be treated by the Supreme Court at Calcutta as specialties, because they are not under seal. As they are formal deeds, and the execution of them is always attested by witnesses, and as they are intended to serve precisely the same purpose as English bonds under seal, we are of opinion that they should be regarded in the same light. The original intention of the seal was to stamp the bond with an authenticity which is better given by the attestation of witnesses to its execution. It will be observed that this arrangement falls in with the views of the chief justice, who is willing to assign to suits upon simple contracts the same limitation that he recommends for specialties.

16. The judges of the Supreme Court at Madras had doubts of the propriety of allowing a longer period for bringing suits for the recovery of legacies than in other cases. They will probably have no objection to the limitation for such suits being the same as for suits upon specialties, &c., as now proposed, and agreeing to such limitation they may not think it advisable to pursue their suggestion that it should run from the time the legatee had notice of the bequest to him, in offering which they contemplated a shorter period, viz., six years. If the shorter period were adopted for the limitation of suits of this nature, we should with them be disposed to recommend that it should be reckoned from the time the plaintiff had notice that a present right to receive the legacy had accrued to him.

17. The Chief Justice at Calcutta sees no sufficient reason for an exception from the general period of limitation in the case of suits for wages and hire, or for the recovery of debts for supplies and accommodations furnished in the expectation of prompt payment, and usually discharged monthly or at shorter periods, and he

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conceives that the provision is comprehensive enough to embrace a great number of cases in which the limitation of one year would be found too short.

18. The short limitation proposed for the cases referred to we recommended, on mature consideration, as suitable to the habits and customs of this country in the affairs and dealings to which we meant it to apply. We specified certain cases in which the debt incurred ought, according to notorious custom and practice, to be discharged monthly, or at a shorter period, and we added a general provision to include suits "on any other account subject by established custom to settlement by the month or a shorter period."

Article 3, cl. 1, sec. 11, of the former draft; sec. 11 of present draft.

19. In this country the incomes of men, or their means for discharging the debts they incur for subsistence, lodging, labour, &c., and the accommodations and supplies they require from day to day in the ordinary course of life, are for the most part received monthly, and it is expedient that they should be applied as they are received to meet those current charges. It is, we conceive, very much for the general interest to promote the early settlement of such debts. This may be done in some degree by barring the demand for them after a reasonable time. When the debt ought to be settled within a month, a year seems to be a reasonable time to allow for seeking the assistance of a court to compel payment, provided the debtor was within the reach of process. And it is here to be observed, that all the time the debtor may have been absent from the Company's territories, and therefore beyond the reach of process, is to be excluded in computing the period of limitation, which is a great extension of the English law, by which a limitation that has begun to run continues to run, notwithstanding subsequent absence*. By the French code, actions by keepers of inns and taverns, on account of lodging and board, and by artizans and work people for payment of their daily labour, &c., are prescribed in six months, and actions by merchants for commodities sold to persons not merchants, and by servants hired by the year for their wages, &c., are prescribed after a year.

20. We at present adhere to our opinion of the propriety of the limitation we proposed, and have continued it in the draft now submitted. But we have requested the Trade Association of Calcutta to consider the subject, and to communicate to us any observations that may have occurred to them upon it, as one in which they are particularly interested, and on which it is desirable to know the conclusions to which their experience leads them. We have not yet received a reply from them, and we do not think it necessary to wait for it; if we are favoured with a report from them, we shall submit it for the consideration of your Honor in Council.

21. We have introduced a provision in section 26 of the draft now submitted corresponding with section 27 of the statute 3 & 4 W. 4, c. 27, to preserve any rule or jurisdiction of any court by which equitable relief may be refused on the ground of acquiescence or otherwise in the party seeking it. This provision seems to be necessary with respect to Her Majesty's Courts; while it may be applicable also in cases falling under the jurisdiction of the Company's Courts. For example, in the case of a person suing in one of the Company's Courts to recover land of which, through fraud or mistake, he had been led to make a conveyance to another, praying that the conveyance may be considered void on the ground of such fraud or error, if it should appear that he had been for some time aware of the alleged fraud or error, and that he had, notwithstanding, by his conduct acquiesced in the adverse possession, as by encouraging the possessor to build upon the land, or otherwise to lay out money in improving it, we conceive that the Court would think itself justified in refusing the remedy and relief sought by him, although not barred by prescription, on the ground that he had by overt acts given an after confirmation to the deed which his plaint impugned.

Sec. 26 of the former draft.

22. The judges of the Sudder Adawlut at Bombay object to the enactment that complaints shall not be proceeded upon by magistrates and officers of revenue in cases in which offenders are punishable by fine only, or in which penalties or forfeitures have been incurred, unless the complaints shall have been received within a year from the commission of the act charged, with reference particularly to hereditary

* By the law of Scotland, actions of debt not founded upon written obligations, held to include merchants' accounts, both wholesale and retail, workmen's wages, servants' wages, aliments furnished, furnishing to a family or domestic establishment, and house rents where the lease is verbal, must be pursued within three years.—*Burge* 3, p. 858.

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hereditary officers who are liable by a regulation of that presidency to the forfeiture of their hereditary rights for misconduct in office. They observe that the offences which this penal provision is intended to check may often be concealed for a longer period than a year, and if the offenders succeed in keeping it concealed over that time they will escape with impunity.

23. We think there is weight in this objection, and as the proposed enactment (which was in substance adopted from the draft referred for our consideration) may be thought to be out of place in a law intended for the guidance of civil courts, we have deemed it advisable to omit it from the draft now submitted.

24. We have maturely considered the suggestion of Sir H. W. Seton, that the minority of Hindoos should be made the same in the Supreme Courts as in the Company's Courts, and we entirely concur with the learned judge on this point. The term is not positively fixed by law for the mofussil by the codes of Bengal and Madras, except in cases in which the estates of minors are under the charge of the Court of Wards, with respect to which it is declared that the minority shall continue to the end of the 18th year. By the Bombay code the term is fixed at 18 years.

25. In the draft before submitted we adopted the period of 18 years as the longest term to be allowed on this account in calculating prescription. In pursuance of the suggestion of Sir H. W. Seton, we have now introduced into the section regarding disabilities a proviso that for the purposes of this Act the term of infancy shall be invariably taken to extend to 18 years.

26. We now beg leave to correct an inaccuracy in the example which we gave in our Report of the working of the rule proposed by us allowing for disabilities in successive parties, subject to a maximum term of 30 years, compared with the existing provisions of the law in force in England regarding real property, by which allowance is made for disability only in the person first entitled with a maximum of 40 years. We put the case of a lunatic father succeeded by a lunatic son, and the sentence which followed should have run thus: "In such a case, under the English law, if the death of the father occurred immediately after the right accrued to him, the right of the son, notwithstanding his disability, might be for ever lost by an adverse possession of 20 years, whereas by our rule it could not be lost by an adverse possession of less than 30 years."

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We submit this our further Report, with the amended draft, for the consideration of your Honor in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

AN ACT concerning the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits in the Courts of Law and Equity, in the Territories subject to the Government of the East India Company.

Legis. Cons. 21 April 1843. No. 43. Enclosure.

Sect. 1. It is hereby enacted, that subject to the exceptions hereinafter mentioned, a title by prescription, both at law and equity, shall be acquired in respect of property, moveable and immoveable, and hereditary offices by "uninterrupted" possession, mediate or immediate, as proprietor for six years in the case of moveable property, and 12 years in the case of immoveable property and hereditary offices; provided that if any other title be proved, the possession shall have been adverse thereto; and provided that nothing herein contained shall be construed to affect any rights arising from possession of moveable property now recognised by law.

2. And it is hereby enacted, that in the case of any benefits, liberties or privileges derived out of or affecting any immoveable property, which shall have been enjoyed without interruption for 12 years, a right to enjoyment thereof against the owner of the property shall be acquired by prescription, subject to the exceptions hereinafter mentioned, unless such benefits, liberties or privileges shall have been enjoyed by some consent or agreement, expressly given or made for that purpose by some deed or writing.

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3. And it is hereby enacted, that when a right to any such benefits, liberties or privileges as aforesaid, whether acquired by prescription or otherwise, shall have been disused for 12 years, the right shall be extinguished.

4. And it is hereby enacted, that when a party shall have been forcibly dispossessed of immoveable property, or shall have been prevented from enjoying some benefit, liberty or privilege derived out of, or affecting immoveable property, and shall have applied within the time limited by any law now in force, or within one month, to the proper authority, for assistance to recover the possession, or the use thereof, and shall have recovered the same, the period during which his possession or enjoyment was interrupted in such manner shall not be considered an interruption within the meaning of this Act.

5. And it is hereby enacted, that when the possession upon which a title by prescription is claimed shall have been acquired by the deprivation of another party who was previously in possession, or in opposition to a title which had accrued, but upon which possession had not been taken, or having been taken, had been previously interrupted, it shall be deemed adverse in respect of the party so deprived of possession, and of any one claiming in the same right, or in respect of the parties interested in the same title, as the case may be, from the time at which the possession actually commenced; and that when an adverse title shall have accrued after the possession was acquired, the possession shall be deemed adverse to the parties interested therein from the time at which such title accrued.

6. Provided that in all cases where the possession upon which a title by prescription is claimed has been acquired by means of a concealed fraud, it shall not be deemed adverse to any party whose title would be extinguished by the prescription until the time at which such fraud shall or with reasonable diligence might have been first known by him or any party through whom he claims, unless such title by prescription be claimed by a *bonâ fide* purchaser for valuable consideration by some person through him.

7. And it is hereby enacted, that possession acquired by a *bonâ fide* purchaser for valuable consideration from a trustee, or from a depositary or mortgagee, shall be deemed adverse to the mortgagor or depositor or beneficial owner under the trust, from the time of the acquisition by purchase.

8. And it is hereby enacted, that a title by prescription shall be acquired by possession, by or through a depositary or mortgagee, which shall have continued without interruption for 30 years in the case of moveable property, and 60 years in the case of immoveable property, unless in the meantime an acknowledgment of the title of the mortgagor or depositor, or of his right of redemption, shall have been given to him, or some person claiming his interest, in writing, signed by the mortgagee or depositary, or the person claiming through him, in which case prescription shall not take effect until possession shall have been had without interruption for 30 or 60 years, as the property may be moveable or immoveable, from the date of such acknowledgment.

9. And it is hereby enacted, that when a party having a right to any estate or interest in reversion or remainder, shall have become entitled to the same in possession by reason of any forfeiture or breach of condition, but shall have waived his action to recover thereupon, possession shall not be deemed adverse to him, or any party claiming in the same right, until the determination of the previous right.

10. And it is hereby enacted, that no plaintiff in any suit for property or rights, to which the above rules are applicable, shall be barred by any length of time, except when a title shall have been acquired by some other person by prescription, any law or regulation to the contrary notwithstanding.

11. And it is hereby enacted, that suits other than for property and rights, to which the above rules are applicable, shall not be admitted in any court except as hereinafter provided, unless they are instituted respectively within the following periods, any law or regulation to the contrary notwithstanding; that is to say,

1st. Within one year from the time the cause of action arose:

Suits for penal damages or pecuniary penalties or forfeitures, for the breach of any law or regulation.

Suits for damages for injury to the personal property, or to the reputation.

Suits for debt, on account of wages of servants, artizans, and labourers; for hire of animals and vehicles; for retail supplies of victuals and articles of daily consumption; for tavern bills, and bills for board and lodging, and for lodging only;

only; for the rent of buildings, and on any other account subject by established custom to settlement by the month or a shorter period.

Suits to alter or set aside summary decisions or orders of the ordinary courts of judicature of the East India Company.

Suits to alter or set aside summary awards by collectors and other officers of revenue, in disputes regarding arrears and exactions of rent.

Suits founded on the right of pre-emption, in cases to be governed by a law or usage which recognizes such right.

2d. Within six years from the time the cause of action arose:

All suits from which no other limitation is herein provided.

3d. Within twelve years from the time the cause of action arose:

Suits upon all debts and obligations of record, and upon specialties and such written securities for the payment of money as are attested by a witness, and for the recovery of legacies.

12. Provided that suits against trustees shall not be barred by any length of time.

13. And provided that where, by any law, a shorter period than one year is specially prescribed for the institution of a particular suit, the limitation so prescribed shall still be observed notwithstanding this Act.

14. 1st. And it is hereby enacted, with respect to suits for the recovery of legacies and for debts, that if an acknowledgment shall have been made by the party liable, within the period of limitation applicable to the case, either by writing signed by him, or by part payment or part satisfaction on account of principal or interest due thereon, then a new period of limitation shall be reckoned, according to the nature of the case, from the date of such acknowledgment, or payment, or satisfaction.

2d. Provided that if there be two or more parties liable, no one of them shall be chargeable by reason only of a written acknowledgment made or signed by any other.

15. And it is hereby enacted, that in suits for balances upon accounts current between merchants and traders who have had mutual dealings, the period of limitation shall be computed from the close of the year in the accounts of which there is the last entry indicating the continuance of mutual dealings, reckoning the year as it is reckoned in the accounts.

16. And it is hereby enacted, that in suits for damages for wrong done by a concealed fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall, or with reasonable diligence might have been first known by the party wronged.

17. And it is hereby enacted, that in computing the periods of prescription, specified in sections 1 and 2, the time shall be excluded during which some party entitled to interrupt the possession or enjoyment shall have been under the disability of infancy or unsoundness of mind, or shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, provided that no longer time than 18 years shall be excluded on account of any such disability, and provided that no longer time than five years shall be excluded on account of such absence, and that the absence shall have been continuous from the time the title accrued.

18. And it is hereby enacted, that in computing the period of prescription, in section 1, in the case of moveable property, the time shall be excluded during which the party in possession shall have been absent out of the territories of the East India Company.

19. And it is hereby enacted, that in computing the periods of prescription, specified in sections 1 and 2, the time shall be excluded during which any suit brought *bonâ fide* to interrupt the possession shall have been pending, and shall have been diligently prosecuted in any court of judicature, which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which shall have been annulled on appeal for any such cause.

20. And it is hereby enacted, that the provision of section 3 shall not have effect when the party entitled to use the benefits, liberties, or privileges therein referred to, shall have been under any of the disabilities specified in section 17, except as subject to the provisions contained in that section.

21. And it is hereby enacted, that in computing the periods of limitation specified in section 11, the time shall be excluded during which the claimant, or

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any person through whom he claims, shall have been under the disability of infancy or unsoundness of mind; provided, in respect of the suits described in articles 2 and 3 of the said section, that no longer time than 18 years shall be so excluded, and in respect of the suits specified in article 1 of the same section, excepting suits for penal damages, that no longer time than five years shall be so excluded; provided further, that suits for penal damages shall never be admitted after the expiration of one year.

22. Provided, that for the purpose of this Act, the term of infancy shall be taken in all cases to extend from birth to the end of 18 years.

23. And it is hereby enacted, that in all suits described in section 11, except suits for penal damages, when the claimant or the person through whom he claims shall have been absent out of the territories of the East India Company and the contiguous territories, and the Island of Ceylon, at the time the cause of action arose, and shall have continued so absent, the time of such continued absence shall be excluded in computing the prescribed period of limitation, provided that no longer time than five years shall be so excluded.

24. And it is hereby enacted, that in all suits described in section 11, the time during which the defendant shall have been absent out of the territories of the East India Company, shall be excluded in computing the prescribed period of limitation.

25. And it is hereby enacted, that in computing the period of limitation applied to any case, the time shall be excluded during which the claimant, or the person through whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same party, or some party whom he represents, *bonâ fide* and with due diligence, in any court of judicature which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which on appeal shall have been annulled for any such cause.

26. And it is hereby enacted, that when by the provisions of this Act a person is barred from bringing a suit for the recovery of any legacy, debt or damages, his right to the legacy, debt or damages, for which a suit might have been brought by him, but for those provisions, shall be extinguished, unless such right is secured by some mortgage, pledge or lien.

27. Provided that nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of any court in refusing equitable relief, on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

28. And it is hereby provided that this Act shall not be construed to affect the provisions of section 10, Regulation XIX., 1793, extended to Cuttack by section 24, Regulation XII., 1805; sec. 10, Regulation XLI., 1795; and section 6, Regulation XXXI., 1803; extended to the territories ceded by Dowlut Rao Scindiah and the Peishwa by section 21, Regulation VIII., 1805, of the Bengal Code.

29. And it is hereby provided, that this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue, or for any public claim whatever.

30. And it is hereby enacted, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed.

(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
1 October 1842.

REPORT from the Indian Law Commissioners to the Honourable the President of the Council of India in Council, dated 8th October 1842.

Para. 18 to 20.

WITH reference to our further report on prescription and limitation, dated the 1st instant, we now submit to your Honor in Council a copy of a letter which we have received from the Trade Association of Calcutta, in answer to our communication to that body on the subject of the limitation of one year, proposed to be applied to suits on accounts which are usually settled monthly or at shorter periods.

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It will be perceived that the Trade Association approve generally of the principle of the proposed limitation, and of the object intended by it, which they consider to be very desirable, if practicable; but they think that in some cases it may not be practicable under the system which at present obtains.

The Association mention certain cases in which they think it would be hard to disallow the tradesman's claim after the expiration of a year; but they immediately afterwards notice a provision of the proposed Act by which the anticipated hardship will, we conceive, be sufficiently guarded against if ordinary diligence be used.

They rightly understand that by this provision, "in all cases where actual payment cannot be obtained within the year for bills coming within the meaning of the proposed Act, a written acknowledgment of their correctness and a promise to pay will be sufficient to form an exception." It will be observed, on reference to the draft, that a simple acknowledgment in writing, signed by the party liable, or a payment of any part of the amount due within the period of limitation, will be sufficient to open a new period of limitation, within which the debt may be recovered by judicial process.

The Association indeed would seem to be content with the provision, except in the case of persons absconding shortly after having contracted a debt, and not being again heard of within the year, and in the case of persons having left Calcutta and gone into the mofussil, who have been applied to for payment by letter without success.

When the debtor goes out of the Company's territories, and therefore beyond the reach of process, all the time of his absence is to be excluded in computing the period of limitation, which, as observed in our last Report, is a great extension of the English law in favour of the creditor. When the debtor is within the Company's territories, he is within the reach of process, if his place of residence can be discovered. We apprehend that in the classes of persons contemplated by the Association, chiefly, we presume, comprehending persons in the public service, professional persons, merchants, traders, &c., who are known and have a certain standing, such as Calcutta tradesmen will give credit to, the cases must be very rare in which a debtor is able to abscond so that he cannot be traced out within the period of limitation, if proper means are used.

Military persons, who of course can be readily traced, can be proceeded against summarily before the military courts of requests, at their stations, if the debt is within the jurisdiction of such courts, as it will commonly be in the cases that are contemplated.

Other persons, being British subjects, and military persons (in cases of debts exceeding 400 rupees) "having left Calcutta and gone into the mofussil," may be prosecuted optionally in the Supreme Court, or in the mofussil courts within whose jurisdiction they may be resident, for debts contracted in Calcutta. We are given to understand that the draft of an Act for executing the process of the Supreme Court by means of the mofussil courts is now under consideration by your Honor in Council, which will greatly facilitate the recovery of debts due to the tradesmen of Calcutta by persons who have withdrawn into the mofussil under the circumstances mentioned by the Association.

It does not appear to us that retail supplies of wine, beer, and groceries, obtained from shops kept by Europeans, should be excepted from the general rule, as suggested by the Association.

On the whole, we do not find any ground in what is stated by the Association to alter the recommendations we have already offered on this subject.

We submit this our Report in continuation of that dated the 1st instant.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

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To *J. C. C. Sutherland*, Esq. Secretary Law Commission, &c. &c. &c.

Sir,

We are honoured with your letter, dated the 3d instant, favouring us with extract of a proposed Act for the Limitation of Suits in the Courts of Her Majesty and of the East India Company, specifying certain suits which, subject to certain exceptions, it is intended should not be admitted in the courts, unless they are instituted within one year from the time the cause of action arose.

We have also been favoured with your note of the 19th instant, forwarding your office copy of the proposed Act for the information of the committee of the Trade Association which we represent.

As no exceptions are given in your letter, we conclude that you wish us to state such as appear to us to be desirable, and also to offer such remarks as we may think proper to lay before the Commissioners.

We accordingly proceed to submit such observations and exceptions as we have to offer.

"*Suits for Debts on account of Wages of Servants, Artizans, and Labourers.*" —It is very desirable that these claims should be, as they usually are, promptly settled.

"*For Hire of Animals and Vehicles.*"—These accounts, like tailors' and shoemakers' bills, though demanded monthly, are frequently not paid for years, and where such accommodation is allowed, it would be hard to disallow the tradesman's claim after the expiration of a year, by debarring him from suing in the courts for its amount when he finds no other course will obtain payment.

The same remarks will apply, though not so strongly, to retail supplies of victuals and articles of daily consumption, for tavern bills, for bills for board and lodging, and for lodging only, for the rent of buildings, and on any other account, subject by established customs to settlement by the month or a shorter period.

By "supplies of victuals and articles of daily consumption," we understand butcher's, baker's, milkman's, butterman's, and other bills of similar nature connected with the usual monthly bazar account, but not articles of consumption obtained from European and native tradesmen, such as beer, wines, hams, cheese, tea, &c. In Great Britain the limitation to one year would doubtless apply to bills for groceries, but in this country the European establishments, such as D. Wilson & Co., W. W. Robinson & Co., G. W. Bright & Co., and others, also the native establishments in the China Bazar, could not be subject to this limitation.

We understand by the printed Act, herewith returned, that in all cases where actual payment cannot be obtained within the year, for bills, coming within the meaning of the proposed Act, a written acknowledgment of their correctness, and a promise to pay in such as may suit the nature of the transaction, will be sufficient to form "an exception."

We hope that the case of persons absconding shortly after having contracted a debt and not being again heard of within the year will be considered an exception.

Also, where persons have left Calcutta and gone into the mofussil, and have been applied to for payment, by letter, but without success, such letters being in many instances systematically neglected, these persons to be considered as having absconded, for purposes of this Act, proof being given of despatch of such demand through the post-office, and of its delivery by the mofussil post-office peon, of which the postmaster's certificate shall be deemed sufficient proof.

We of course see that the effect of the law, if it be so passed as to affect all trades (for it is the custom of almost all trades in Calcutta to demand payment monthly), will be to limit credit to one year, or even a shorter period, which would be very desirable, if practicable, but which in many cases it is not, under the system which at present obtains.

We have, &c.

Calcutta, Trade's Room, 3 October 1842.

(signed) *Robert J. Lattey*,
Master Trade Association.

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(No. 52 of 1842.)

From the Junior Secretary to the Government of India, with the Governor-general, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department, Fort William; dated Camp, Roopur, 26 November 1842.

Legis. Cons. 21 April 1843. No. 46.

Sir,

Legis. Dep.

I AM directed to acknowledge the receipt of your letter, under date the 28th October, No. 263, and in conformity with the request contained therein, to submit to you for the information of the Honourable the President in Council, transcripts of a despatch from Mr. Secretary Hamilton, dated 26th July last, and of its enclosures, on the subject of the proposed Act regarding rights by prescription.

I have, &c.
(signed) *C. G. Mansell*,
Junior Secretary to the Government of India
with the Governor-general.

(No. 1438 of 1842.)

From *R. N. C. Hamilton*, Esq. Secretary to the Government, North-western Provinces, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department, with the Governor-general, dated Agra, 26 July 1842.

Legis. Cons. 21 April 1843. No. 47.

Sir,

Jud. Dep.

WITH reference to the letter received from Mr. Junior Secretary Halliday, No. 84, dated 21st March last, I am directed by the Honourable the Lieutenant-governor to forward, for the purpose of being submitted to his Lordship, the accompanying transcripts of letters from the gentlemen named in the margin, and from the Sudder Court at Allahabad, dated 11th instant, containing their respective opinions of the proposed law regarding the acquirement and extinction of rights by prescription, and for the limitation of suits, and to observe that the enactment in question is one of such immense importance, and calculated to produce such extensive effects, that his Honor will reserve the expression of his sentiments until he obtains the opinions of those officers of government who were addressed on the subject, and who have this day been requested to expedite the transmission of their reports.

Mr. C. M. Caldecott, dated 6 June 1842.
Mr. J. Thomason, dated 21 June 1842.
Mr. H. Pidcock, dated 6 July 1842.

2d. For facility of reference, a copy of Mr. Halliday's letter, to which this is a reply, is herewith forwarded.

I have, &c.
(signed) *R. N. C. Hamilton*,
Secretary to the Government, North-western Provinces.

(No. 1, in No. 1438 of 1842.) (No. 140.)

From *C. M. Caldecott*, Esq. to *R. N. C. Hamilton*, Esq. Secretary to Government, Judicial Department, North-western Provinces, Agra; dated Cawnpore, 6 June 1842.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 1,001, of the 31st ultimo, enclosing a letter, No. 84, of the 21st March, from Mr. Secretary Halliday, and the printed Report of the Law Commissioners on the Act for amending the law with respect to the limitation of suits, together with a draft of the proposed Act, and requesting me to give my opinion on the subject therein embraced.

2. Before making any remarks upon the Report and proposed Act, I ought to state that for the last 13 years I have had no direct experience of the practice

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of the civil courts; consequently, any opinion that I may give can only be grounded upon several observations of the effects of the present system on the welfare of the community, and here again my recent prolonged absence from the country will greatly reduce the value of my testimony.

3. I heartily approve of the general principle of the proposed Act, because I believe that few *bonâ fide* claimants at the present time would allow their title to be barred by non-prosecution within the periods therein fixed, and any measure which contracts the limits of fraudulent litigation must be a great boon to this country by rendering the title to property more secure.

4. I have examined the proposed Act with attention, and I proceed to note a few amendments which strike me as advisable.

In section 6, I would add, "provided such purchase be duly registered."

In section 7, I would substitute 20 and 40 for 30 and 60 years, and would insert the words "and duly registered," after the words "claiming through him."

5. With regard to clause 2, section 11, I think that suits for the enforcement of "contracts" might fairly be removed to Clause 1.

6. In section 16, I would limit the period of action in all suits "to six years from the time at which the fraud shall, or with reasonable diligence might have been first known by the party wronged;" because the very circumstance of the discovery of a fraud having been practised towards him, would naturally induce the defrauded party at once to proceed.

7. With regard to the exception in favour of parties absent from the Company's territories, I am inclined to think that an exception should also be made in favour of servants in Government employ within the territories of the Company, who may be stationed above a certain distance from the court where their claims must be instituted; and I would urge this argument particularly with reference to native soldiers, whose regiments for so long series of years may not be within many hundred miles of their homes, and who have rarely the means of employing a paid agent. I am not prepared to say what is the proper limit to be adopted; but for the sake of mooting the question I would propose that the provisions of section 22 should be extended to all parties in Government employ, serving at a distance of more than 200 miles from the nearest court at which their claims could be heard.

8. The proposed Act will effect many improvements, but it does not touch the greatest practical act of the present system; viz., the facility with which parties are enabled, by keeping a stock of old stamps, to prepare deeds of all kinds of any antecedent date which may suit their purpose.

9. The extent to which this practice is carried can hardly be imagined. I am credibly informed that the most respectable firms pursue it; that there is hardly a single village mahajun who does not adopt it, and that it is becoming more prevalent every day; some cases of the most glaring nature have been brought to my notice since I have taken charge of the office here.

10. One remedy for this abuse would be to enact a compulsory system of registration, with local registry offices, in each pergunnah. A monthly statement of deeds registered at their local office should be sent for deposit in the judge's records, and no deed should be received in the civil courts unless it had been registered at the time of execution.

11. I could enlarge upon the dreadful extent to which the abuse is carried, and the grievous effect it has upon the welfare of the community; but my object is to bring the subject generally under notice, as it would be the duty of others more conversant with the civil code to mature a plan for its extinction.

12. I am sorry that I have not leisure at present to make more extended remarks upon the proposed Act; but the provisions contained in it appear generally so unobjectionable in principle, that I do not think that by further delay I could hope to acquire sufficient practical experience to enable me to make any important suggestions for its improvement.

13. I beg to return the printed documents which accompanied your letter under acknowledgment.

I have, &c.
(signed) *C. M. Caldecott.*

No. 1.
Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

(No. 2, in No. 1438 of 1842.)

From *J. Thomason*, Esq. to *R. N. C. Hamilton*, Esq. Secretary to Government, North-western Provinces, Agra; dated Allahabad, 21 June, 1842..

Sir,

I HAVE the honour to acknowledge the receipt of your letter, dated the 31st ultimo, transmitting a proposed law, regarding the acquirement and extinction of rights by prescription, and take the liberty of offering a few remarks which occur to me.

2. Prescriptive title by possession is almost unknown to the Hindoo* or Mahomedan law, and the feeling is consequently strong in the native mind, that nothing can annihilate inherent right so long as it is capable of proof. The force of this principle has often been noticed. Political convulsions may lay waste the country, famine may drive away the inhabitants, or extravagance may ruin individuals, and compel them to leave their homes; still, whenever the original proprietors, or their heirs, are capable of returning and re-asserting their rights, national feeling is strong in favour of the equity of according the right. In our own provinces in this part of the country, the feeling frequently shows itself in the readiness with which a putteedar is admitted to the enjoyment of his hereditary right in the village. On the re-appearance of the original sharer or his heir, however long may have been the period of dispossession, it is usual for the brotherhood to assemble, and on their being satisfied of his right, immediately to restore the land; a contrary proceeding would be considered highly immoral and disreputable. The gradual advance of our principles of government has tended to weaken this feeling; the unprincipled and oppressive have learned to assert a title founded on possession, of which the honest and upright have not availed themselves. More than this, the powerful and crafty have taken advantage of the rule, to defraud the unwary and ignorant, keeping them in play by specious promises and pretences for a time, till the period has passed away, and the deluded claimant finds himself deprived of his right by an arbitrary law, opposed to all his preconceived notions, and the grounds of which he is unable to comprehend.

3. Now the proposed law in this respect will work a very great change in Bombay by altering the period of limitations, regarding immoveable property, from 30 to 12 years; but it also will cause a considerable change in the practice of this government.

4. Section 3, 1805, merely prohibits the regularly appointed civil courts from taking cognizance of a claim after 12 years, except in certain cases; but the claim is still in existence, and it is open to the Government, on sufficient cause shown, to revive and admit such claims by a special enactment, either before the ordinary courts or any special court. Thus by Regulations I. 1821, and I. 1823, a special commission was appointed to redress a particular class of wrongs without reference to any limitation of time, and a similar power was generally understood to be vested in collectors employed in settlements by Regulation IV. 1828.

5. Such a power as was conferred by these enactments may be well or ill exercised, but it cannot be denied that by our position as foreigners, in a land where our knowledge of the feelings of the people and customs of the country is at best very limited, many wrongs are likely to be inflicted and sanctioned which may fail of remedy in 12 years; such wrongs, the legislature pledges itself by the proposed Act not to remedy, because it creates in an opposite party a legal title; there is in our system a promptitude of unpremeditated injustice, and tardiness of remedy, which renders such a principle hazardous.

6. A known example will serve to illustrate possible danger.

7. As

* An obscure text of Yajnavaliya, incorrectly translated in Colebrooke's Digest (Book I. ch. xiii.), misled Sir T. Strange in his work on Hindoo Law (Vol. I. p. 33), and his Pundit (Vol. II. p. 26); see the question fully argued and clearly stated in Macnaghten's Hindu Law (Vol. I. p. 201), from the Mitacksbara, and still clearer in Borradaile's translation of the Vynvuhara Mayaokhu (Ch. II. sec. 2), where (para. 5) the text is accurately translated. See further, Summary of the Law and Customs of Hindoos for the Law (p. 80) at Bombay, and (p. 278) for the Custom.

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7. As the law now stands every suit of a value under 1,000 rupees, is finally disposed of by the zillah judge. In such suits the Sudder Dewanny Adawlut can exercise no jurisdiction. The civil judge may take a view of one case, or of one class of cases, contrary to written law, contrary to the express declaration of the superior court, and decide wrongfully. No legal power of setting him right exists without a new law. The law may be opposed or delayed, or forgotten. If by section 19 of the proposed Act a remedy might be found in the individual cases, yet none would exist in the numerous parallel cases, where the parties had prudently abstained from prosecuting their suit in the face of established precedent.

8. It does not appear what circumstances have led to the proposal of the present enactment, but it may be thought, that both positive and negative prescription, as regards titles to land, and several privileges attaching to it, are opposed to the law and the feelings of the people, and are of dangerous and uncertain effect.

9. Sections 2 and 3 may have very extensive effect. Tenants at will, by failure of the proprietor of the land to demand an increase of revenue for 12 years, would be changed into tenants with right of occupation at fixed rates; and that notwithstanding they may have been judiciously declared at the time of settlement to be tenants at will. As the law, sections 2 and 3, at present stands, it would appear that the execution of a written agreement between them, would bar the creation of the right in the tenant, but that the power of the proprietor to exercise a contrary right would be extinct. Generally speaking, whenever two parties having possession in any immoveable property, are capable of exercising incompatible privileges, the execution of some deed or writing should bar the extinction of one privilege as well as the creation of its opposite.

10. The law makes no provision for the maintenance of a right depending on prescription, which can only be exercised occasionally. An instance may be found in one of the incidents of a Byachara tenure, as defined in paragraph 234 of a printed resolution of government, passed on 1st August 1822, before the enactment of Regulation VII. 1822. In this case, "although the lands possessed by each sharer and body of sharers, and the quota of jumma payable by each, were distinctly ascertained at the period of settlement, they still continued liable to repartition, whenever the jumma payable by any one became greatly disproportioned to the relative value of his lands." Now in such a case, a valuable privilege attaching to the land, consists in the power of claiming partition and re-adjustment of the jumma. But there might be no occasion to make the demand for 12 years, whilst at the close of the term, section 3 would appear to extinguish the right.

11. These cases may be met by adding to section 2, "or be created by some law, or judicial decision," and by adding to section 3, exceptions similar to those now attached and proposed to section 2. There are, however, cases where such additions would defeat the end of the law, as for instance, right of way or light awarded by judicial decree, but disused for two years.

12. No provision indeed appears to be made for titles accruing from occasional exercise at long intervals. Such are family customs of inheritance, &c. (kulachar) specially recognized by our courts. Such too are many village customs, which can only be called into exercise on particular occasions, the marriage of the proprietor, &c. &c.

13. These cases may rather serve to point out possible risks of the proposed principle, than to call for special legislation to define and confirm them.

14. It does not appear why the *bonâ fide* purchaser from a person who has obtained property under a concealed fraud, should be entitled to count his adverse possession further back than the purchaser from a trustee or mortgagee (compare section 8 with section 7). As regards the original proprietor, the hardship is greater in the case of dispossession by concealed fraud, than in that of a trust or mortgage, whilst the terms of both cases suppose a *bonâ fide* transaction, and therefore equal inadvertence on the part of the purchaser. But would not the seller of trust or mortgaged property be fairly held guilty of a concealed fraud? If so, the distinction is unnecessary.

15. In section 6, depositaries and mortgagees are classed together, as acquiring a title by possession for 60 or 30 years, whilst in section 12, suits against trustees are not barred by any length of time. Deposits seem much more of the nature of trusts than of mortgages, the reason of classing them with the latter rather than the

the former, is not very evident. Amongst the natives, deposits are very common, trusts the reverse.

16. In sections 17 and 31, exceptions are allowed for disability, resulting from absence out of the territories of the East India Company, and the contiguous territories. Absence in China and Afghanistan is likely to be pleaded under those clauses. The former may be considered contiguous, but not the latter; perhaps the additions of the words "in Hindostan" would remove the ambiguity. A fair exception might be allowed to all persons in the military employ of Government during actual service in the field. This would be prized by our native soldiers, many of whom enlist in the hope of amassing sufficient to enable them to recover lost rights.

17. As the draft stands, section 30 restricts its operation to the Company's courts. There are two classes of residents in this country; one of them is highly intelligent, able to enter into all the merits of a law of this kind, with no prejudices opposed to its adoption, and having justice administered to them by a learned and highly educated body of officers, whilst at the same time their existing laws on this subject are very obscure and involved. The other class is simple and ignorant, quite unable to comprehend the arguments which recommend this law, having strong prejudices opposed to them, and to whom justice is administered by a class of European and native functionaries, very few of whom are competent, and still fewer willing to enter into the niceties and refinements of the law, whilst their existing law is simple and familiar to every one. It is not apparent why a body competent to legislate for both classes should contemplate passing the law for the former, and not for the latter class. If good for either, it certainly must be better adapted to the former than the latter, and more needed by them.

(signed) *J. Thomason.*

(No. 3, in No. 1438 of 1842.) (No. 171 of 1842.)

From *H. Pidcock*, Esq. Officiating Additional Sessions Judge, to *R. N. C. Hamilton*, Esq. Secretary to the Government, N. W. P. Agra.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 1001, dated the 31st May, transmitting the Report of the Law Commissioners on the Act for amending the law in regard to the limitation of suits, together with a draft of the Act on the acquirement and extinction of rights by prescription, and requesting my opinion thereon.

2. The proposed Act appears, as far as I am able to judge, well calculated to meet the objects contemplated by the Legislature. There is, however, one point upon which I take the liberty to offer a suggestion. Section 11, clause 2, includes, I believe, among other contracts, those between assamees and zemindars, and agreeably thereto, the limit for all actions of this description is six years from the date of the cause of action. Considering the great power of the zemindar over his assamee, the circumstance of the putwarree being the servant of the former, the promptness with which cases of this nature are now summarily disposed of, and the facility with which false evidence is procurable in this country, even in cases instituted almost immediately after the origin of the cause of action, and when detection is of course much easier, I would, with all due deference, suggest that no suit for exaction, or for arrears of rent, be admitted in any court of judicature, unless instituted within the period of three years from the date of the cause of action.

I have, &c.

Bareilly, Officiating Additional Session Judge's Office, 6 July 1842. (signed) *Henry Pidcock*, Offg Addl Sess. Judge.

No. 1.
Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

(No. 4, in No. 1438 of 1842.) (No. 1229 of 1842.)

From *M. Smith*, Esq. Register to the Court of Sudder Dewanny Adawlut, Allahabad, to *R. N. C. Hamilton*, Esq. Secretary to the Lieutenant-governor in the Judicial Department, North-western Provinces, Agra; dated Allahabad, 11 July 1842.

Sir,

Sudder Dewany Adawlut, N. W. P. Present: B. Taylor, G. P. Thompson, and F. Currie, esqrs. judges.

I AM directed to acknowledge the receipt of your letter, No. 1001, dated 31st May last, forwarding a Report of the Law Commissioners, and draft of a proposed Act regarding the acquirement and extinction of rights by prescription, and for the limitation of suits, in reply to which the Court desire me to signify their approval of the proposed law, on which they have no further observations to offer than the following.

* "The time shall be excluded during which some party entitled to interrupt the possession or enjoyment shall have been under, &c."

2. The wording of part of section 17 (at beginning) might be rendered clearer by altering the words in the margin* to these: "the time shall be excluded in respect to a party entitled to interrupt the possession or enjoyment during which such party shall have been under, &c."

3. To section 19, the Court would add this proviso: "Provided that the benefit of this exclusion can only be claimed by such suitor, or his heirs and representatives."

I have, &c.
(signed) *M. Smith*, Register.

(No. 5, in No. 1438 of 1842.) (No. 84.)

From *F. J. Halliday*, Esq. Junior Secretary to Government of India, Legislative Department, to *R. N. C. Hamilton*, Esq. Secretary to the Government, North-western Provinces; dated Fort William, 21 March 1842.

Sir,

I AM directed to transmit to you, for submission to the Honourable the Lieutenant-governor, North-western Provinces, the accompanying Report from the Law Commissioners, dated the 26th February last, on the Act for amending the law with respect to the limitation of suits, together with draft of an Act, submitted by the Commissioners, on the acquirement and extinction of rights by prescription in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's courts at Calcutta, Madras, and Bombay, and in the Straits Settlements; and for the limitation of suits in the courts of the East India Company, and to request that the opinions of the Sudder Court, and of any other officer competent to advise on the subject discussed, together with that of his Honor, may be submitted for the consideration of the Supreme Government.

2. With the view of distributing the Report and Act, 12 copies of each are forwarded.

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

(No. 108.)

Legis. Cons. 21 April 1843. No. 48.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, dated Fort William, 13th December 1842.

Sir,

WITH reference to my letter, No. 82, dated the 28th October last, I am directed by the Honourable the President in Council to transmit to you for submission to the Law Commissioners the accompanying despatch in original, dated the 26th November last, from the Junior Secretary to the Government of India, with the Governor-

Governor-general, forwarding transcripts of Mr. Secretary Hamilton's despatch of 26th July last on the subject of the proposed Act regarding rights by prescription.

2. You are requested to return the original enclosures with your reply.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of India.

From the Indian Law Commissioners to the Honourable the President of the Council of India in Council, dated 24 December 1842.

Legis. Cons. 21 April 1843. No. 49.

1. We have now the honour to submit a special report on the subject of prescription and limitation of suits, in reply to the opinion of Mr. Officiating Advocate-general Prinsep, transmitted to us by Mr. Halliday's letter of the 11th November.

2. As Mr. Prinsep was, at the time of writing his opinion, the principal legal adviser of Government, as he discusses in it topics of very great and very general importance to the legislation of India, and as his opinion is opposed not only to the details, but to the whole scheme of the measure recommended by us, we have thought it right to make that opinion the subject of a distinct report.

3. Mr. Prinsep says, "It appears to me worthy of serious consideration, whether, on the eve of such extensive innovation, it would not be better to adopt at once the English period of 20 years for realty, as well as that of six years for personalty, and thereby at once to assimilate the law on this head throughout this portion of the empire with that prevalent in the paramount state, and generally throughout the colonial possessions of Great Britain."

4. We admit that such an assimilation is in itself a desirable object, and, if the general terms used by Mr. Prinsep were an accurate expression of the particulars comprehended under them, we should hesitate before we recommended that British India should (when a change of the law of limitation is meditated) continue to be, or that any portion of it should be made, an exception to the general law of the British empire.

5. But it will be found that the general terms in question do not express with accuracy the particulars comprehended under them.

6. Within the paramount state itself there is a large and important territory, viz. the kingdom of Scotland, in which the period of limitation is not that of the English law.

In North America the same is true of the great colony of Lower Canada.

In the West Indies the same is true of the four great colonies, each of which considerably exceeds in wealth and population any other of those settlements; we mean the colonies of Jamaica, Barbadoes, Trinidad, and British Guiana, the last being an union of the three colonies of Essequibo, Demerara, and Berbice.

In the East the same is true of the great colonies of Ceylon, Mauritius, and the Cape of Good Hope.

7. From this enumeration (in which we have omitted several minor dependencies) it will, we think, be evident that whatever objections may lie against our scheme, the objection that it is a violation of uniformity, or of any considerable approach to uniformity, in the laws of the whole British empire, is not among their number.

8. But with reference to this question of uniformity there is another feature of our scheme which ought to be considered, and to which Mr. Prinsep adverts, though in another part of his opinion, we mean the introduction of positive prescription.

Mr. Prinsep adverts to it in these words:

"Should the Government concur in this view of the matter, it will follow almost of course that such deviations from the English rules and exceptions as have been suggested by the Law Commission must for the most part be abandoned. Else the object of uniformity would hardly be attained. Fortunately few, if any, of those deviations are of sufficient importance to cause any hesitation, and some do not appear to me to be improvements; for instance, the distinction between positive and negative prescription seems to be little better than a verbal distinction."

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9. In another place we shall give our reasons for dissenting from the view here taken by Mr. Prinsep; at present we are considering the subject only with reference to the supposed uniformity of the laws of the British empire.

10. Now it does so happen that the member of the paramount state, and every one of those great and important dependencies of it, which we have been enabled to adduce as differing from the law of England in respect of the period of limitation, differ also from the law of England in respect that they have adopted the principle of positive prescription *.

11. We think, then, than an universal law of limitation for the whole empire is an object so remote that it ought not to influence us in our practical recommendations for the improvement of the laws of British India. We think, moreover, that it is very far from certain that to copy the law of England is the best way to approximate to that remote object.

12. After what has been said on the first topic, it might seem superfluous to dwell upon this last; but the truth is, that although comparatively unimportant with reference to the particular laws under discussion, it is with reference generally to the practical objects for which the Legislature of India, and the Law Commission were instituted, by far the most important topic which Mr. Prinsep treats in the opinion which he has given to Government. Mr. Prinsep indeed applies the argument he uses on this topic only to the questions referred to him; but it is obvious that, in its own nature, it is applicable to every change which may be proposed in the laws of British India.

13. Mr. Prinsep's argument is as follows—"By no other expedient will general uniformity on this point be attained. For it is not to be supposed that the Legislature of Great Britain, or of any of its colonies, will look to that of India for a model. The paramount Legislature will alone be regarded, and though the periods and rules of limitation it has laid down may not be the best that could have been chosen, they are certainly not inferior in respect of convenience or of equity to those of the regulation laws of India, so far as realty is concerned, and are admitted to be preferable in respect of personalty, by the recommendation of the Law Commission itself."

14. We do not agree with Mr. Prinsep, that general uniformity on this point (supposing it attainable at all) can be attained by no other expedient.

It is a common remark that the dependencies of England are in advance of her in respect of legislation, and that she gradually follows in their steps. It would be extraordinary if it were not so: as far back at least as the time of Lord Bacon, it had been felt that there were very great defects in the English system. A complete reform was meditated by the daring legislators of the Commonwealth. The plan was not followed up after the restoration of the monarchy, not because the want of reform was not felt, but because it was thought (and perhaps really was) safer to proceed gradually. Now the legislation of all the dependencies of Great Britain, so far as it is English, is of a later date than the period at which the defects of English law had become manifest to reflecting men, and accordingly the legislation of the colonies is free from the most glaring of those defects.

15. The consequence, as might be expected, is that, as we have said, England gradually follows in the steps of her dependencies, not because she looks to them for a model, but because they have already approached nearer to the ideal model at which she looks in common with them.

16. We will only advert to two examples of this, one in which the paramount Legislature has already followed the legislation of the dependencies, the other, in which it seems to be about to do so.

1st. In the manner of barring an entail, uniformity has been attained between Great Britain and many of her colonies, not by their adopting the cumbrous, inconvenient,

* By the law of Scotland the period is 40 years, and there is positive prescription.—*Burge's Commentaries on Colonial and Foreign Laws*, iii. p. 53, et seq.

By the Coutume de Paris, in force in Lower Canada, the period is "dix ans entre presens, et vingt ans entre absens," and there is positive prescription.—*Ib.* p. 36 and p. 52.

By the law of Jamaica the period is seven years, and there is positive prescription.—*Ib.* p. 96.

By the law of Barbadoes the period is five years, and there is positive prescription.—*Ib.* 104.

In British Guiana, the law of Holland is in force, in which the period is a third part of 100 years, and there is positive prescription.

In Ceylon and the Cape of Good Hope also the law of Holland is in force.—*Ib.* p. 35.

In Mauritius the Code Civil is in force, which adopts in this respect the provisions of the Coutume de Paris.—*Ib.* p. 36, et seq. and p. 52.

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convenient, and generally unintelligible method of fines and recoveries, but by the mother country adopting the simple and direct proceeding which they, looking at her, not as a model but as a beacon, had previously established.

In the important object of protecting purchasers of real property against secret conveyances and charges, the dependencies have in general adopted the effectual scheme of a register.

Mr. C. R. Fairbanks, in a paper communicated to the Real Property Commissioners by Mr. John Bell, entitled "Notes on the System of Registration in Nova Scotia," observes—"It appears that in establishing this system of registration (which with but few modifications, is the same throughout all that was and now is British America, Lower Canada excepted) the chief objects were—

"Notoriety as to the title of every parcel.
"Notoriety as to the changes affecting it.
"Security against the loss of conveyances.

"These ends have been to a great degree attained in all those countries, and there is perhaps neither in the United States, the Northern Colonies, or the West Indies, an institution more highly prized, or to which the inhabitants are more attached than this of the registry of deeds."—*Appendix to Second Report*, p. 482.

Now even supposing uniformity in the laws of the whole empire to be an object for which it would be worth the while of these colonies to sacrifice this highly prized institution, and to borrow from the mother country the precarious, inadequate, and in some respects mischievous scheme of protection by outstanding terms (a supposition which is clearly not according to the fact), they would still act unreasonably in doing so, because they have good ground for supposing that the mother country will save them from the necessity of this sacrifice, by abandoning her own imperfect system, and adopting theirs.

17. We conclude then that, even if the legislature of India and the Law Commission were to look to the magnificent, but remote object of assimilating the laws of the whole empire, they would not act wisely in copying the law of England merely because it is the law of England, and we now descend from these general considerations to the discussion of the specific objections which Mr. Prinsep urges against our scheme.

18. We begin with his objection to our period of prescription and limitation.

Mr. Prinsep uses arguments to show generally that an extension of periods of limitation is preferable to a contraction of them; he says, "There may be inexpediency in extending the period of legal limitation, there can be no injustice, for it is only allowing a man a longer time to claim his own." Such arguments appear to us opposed to the very principle of limitation. The principle of limitation is that the legislature ought to regard long possession with greater favour than mere right divested of possession. If it is unjust to shorten the existing period of limitation, it must have been still more unjust to create a period of limitation where there was none before.

Again, Mr. Prinsep says, "None could with reason complain of the extension from 12 to 20 years as to realty; many might have just cause to complain of the reduction of limitation as to personalty from 12 to six years." It seems to us that all those who have a possession which is ripening into a title, would have cause to complain that the advantage which the legislature has given them, is diminished in value. A man whose possession wants only one month of 12 years, has surely some cause to complain, if he finds that instead of gaining a title in one month, he cannot gain one in less than one month and eight years.

19. It is not, we think, by such considerations as these that this question, which is not one of principle, but of degree, can be decided. Every period of limitation is necessarily a compromise between that claim on the consideration of the legislature which is founded on naked right without possession, and that which is founded on long possession without right; and whoever asserts that there can be no injustice in extending the period of limitation, ought in consistency to assert that there can be no injustice in taking away all limitation, and thus disregarding altogether the latter class of claims.

20. The English Real Property Commissioners say, correctly as it seems to us, "as knowledge is diffused, and the administration of justice becomes regular and pure, the periods of limitation may be safely abridged," and they then show that this has been the regular course of English legislation.

21. To extend the period therefore from 12 to 20 years would be a step backwards; a step backwards, however, may possibly be expedient, but a strong case of

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expediency should be made out to justify it. We must admit to Mr. Prinsep, that "it is difficult to assign any reason why limitation as to realty should be stricter in India than in Europe," that is, difficult to assign any reason why it should have been made so. But having been made so, and having continued so for a period which probably extends beyond the memory of any living man, we conceive that the habits of the people, so far as they are liable to be affected by laws of limitation, must have adapted themselves to this law *. The enactment of this limitation in the Regulations is of the year 1793. In that form the limitation of 12 years has therefore unquestionably subsisted for half a century wanting one year. But it had previously subsisted for 21 years, that is, from the year 1772, when the administration of civil justice was first committed to the servants of the Company by the establishment of the Courts of Dewanny Adawlut. A law which has continued uninterruptedly for a space of 70 years, has surely acquired whatever force and reverence can be derived from long custom, but there is strong reason for believing that this limitation was no innovation of the British Government, and that it had existed long before. The Mahomedans disregarded the period of 20 years, which is that of the Hindoo law. In their own law there is no period of limitation. But though the Mahomedan sovereigns did not assume such a legislative power as is exercised in Christian countries, they did regulate the proceedings of their courts of justice, and in that way modified the legal rights of their subjects, and they appear to have done so in this matter of limitation. Mr. Prinsep, speaking of the period of 12 years, observes, "when first introduced by Regulation, and applied equally to real and personal property, it was a great innovation upon the law of the majority (Hindoo), which had fixed 20 years for realty and 10 years for personalty." We believe that this is a mistake. Even if there were no external evidence on the subject, the extreme improbability that Englishmen, accustomed themselves to a limitation of 20 years, framing a limitation for the inhabitants of a country of which the majority were also accustomed to a limitation of 20 years, and the minority to no limitation at all, should fix arbitrarily upon a limitation of 12 years, would make us hesitate to believe that the fact can have been so. In a question of degree the human mind will catch at the most fanciful grounds for preferring one number to another, rather than be without some ground to allege to itself for preferring the number which it adopts. With such reasonable grounds for preferring the number 20, it seems to us incredible that the framers of the Regulations should have pitched arbitrarily upon the number 12.

22. We therefore feel no difficulty in receiving as historical truth the statement on this subject which is contained in the plan for the administration of justice proposed by the committee of circuit in the year 1772, corrected and explained, as it is, in the preamble to Regulation II. of 1805.

"The period of 12 years (we quote from the abovementioned preamble) adopted in all these provisions appears to have been established when the administration of civil justice was first committed to the servants of the Company on the institution of Courts of Dewanny Adawlut in the year 1772, and in the plan for the administration of justice then proposed by the committee of circuit (which was adopted by Government on the 21st August 1772), it is remarked that "by the Mahomedan law, all claims which have laid dormant for 12 years, whether for land or money, are invalid; this also is the law of the Hindoos, and the legal practice of the country."

* Mr. Prinsep gives some examples of the injustice which may arise from shortening the period of limitation. "It deprives parties," he says, "of rights without notice, as in the case of absentees, who may reckon on the continuance of the law existing at the time of their departure, or, in the case of infant heirs and legatees, whose ancestors or testators may have done so;" and perhaps, by the expressions above quoted, he means only that there is no injustice of this sort in lengthening the period of limitation; and this must be admitted; or perhaps he means that the disappointment of the expectations of a possessor without right cannot properly be called injustice. In that case we should not dispute the propriety of so limiting the term "injustice," but we should dispute the propriety of opposing to it, for the purpose of this argument, the term "inexpediency." If we may not call this disappointment of expectation injustice, we must be allowed to call it *damnum absque injuriâ*, which a legislature is frequently obliged to consider an equal or superior evil to injustice, and which it always does consider in that light when it enacts laws of limitation.

With regard to the injustice which, Mr. Prinsep says, may arise to persons having right without possession, if there is sufficient risk of that injustice happening to require any change in our scheme, the change required is clearly not to abstain from shortening the period of limitation (assuming that measure to be in other respects desirable), but to put off the operation of the Act upon persons in the condition supposed.

country." This observation does not appear to be correct with respect to the Hindoo and Mahomedan laws, though it may have been so with regard to the legal practice of the country.

23. For the reasons above stated, we have little doubt that it was the legal practice of the country, and we therefore hold that, although the period of 12 years may have been inconveniently short when the Mahomedan sovereigns first introduced it, the length of time for which it has subsisted rebuts any presumption that it can be so now.

24. Mr. Prinsep says, "In Bombay, as noticed in the Report, the new period of 12 years was found much too short." That somebody thought it too short is indeed unquestionable, but that it was found to be so, is a proposition for which, as far as we know, there is no evidence. If we were to hazard a conjecture as to the motives of the Bombay legislators, it would be that they desired to imitate the Roman Law, of the general merits of which they might well entertain a high opinion. We repeat the opinion which we expressed in the passage of our Report alluded to by Mr. Prinsep. "We have no reason to think that the period of limitation, which has been observed from the first establishment of the Courts of Bengal and Madras, has been found in practice to be too contracted, or that there are any peculiar circumstances which render it advisable to allow a longer period for the acquisition of rights of the same kind in the Presidency of Bombay."

25. With regard to the European inhabitants of the presidency towns, the administration of justice to them is unexceptionable on the score of regularity and purity (though we believe that in some other respects it is capable of much improvement), and, in consequence of the very small proportion of people in the lowest ranks of society, knowledge is diffused much more generally than in England. The shortening of their period of limitation can hardly be looked upon as any inconvenience. It is a step which, according to the doctrine of the Real Property Commissioners, would be taken in the right direction, and it would be difficult to say that it would now be taken prematurely.

26. We proceed to the objection which Mr. Prinsep makes to the introduction of the principle of positive prescription. We have already had occasion to quote a part of what he says on this subject. We now give the whole: "The distinction," he says, "between positive and negative prescription seems to be little better than a verbal distinction; a title founded on mere adverse possession will always, in the estimation of mankind, be a mere negative title, *i. e.*, based on the inability of the rightful claimant to recover his own by legal process, and therefore very different from a title that can be traced to a legal origin."

27. That this is the view generally taken of the matter by that portion of mankind who have lived under English law may be true, but we think it is an erroneous view, and that nothing is gained and something lost by the law being in such a state as to give rise to it.

28. We conceive that it is of great and of increasing importance (increasing because the intelligence of laymen and their attention to legal subjects is increasing) that the practical objects aimed at by the law, should be attained in the simplest and most rational mode. Now the object aimed at in the present instance is, we conceive, that adverse possession of land for 12 or for 20 years should (except in certain excepted cases) give an indefeasible title to the possessor. The object is not that some other person should lose a title which he once had, for that, considered by itself, is not a benefit but a mischief. It only assumes the character of a benefit when it is considered as the means of practically conferring a title upon the possessor for 12 or 20 years. Our law does this in direct and explicit terms. It sets up the positive title founded on possession as the principle, and from this it follows as a logical consequence, that the title of any person to whom the possession has been adverse, is taken away; and from this again it follows as a logical consequence, that the remedy for the enforcement of that title is taken away.

29. The English law before the late statute, did not arrive at the real principle at all. The English law, as amended by the late statute, only arrives at the real principle by travelling through its consequences.

The English law sets up as the principle, that the remedy of the party to whom the possession is adverse, shall be taken away, and then enacts as a legal consequence (what of course is no logical consequence), that when the remedy is taken away the title shall be taken away also, making the title of the person in possession to consist of the want of title in any other person. This is a very circuitous

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method of arriving at the desired end. Assuming that the practical result as regards the administration of the law is the same, the practical result as regards the understanding of the law, and the approbation of it by the community, cannot be the same.

30. The reason which induced the English Real Property Commissioners to adopt the circuitous method of attaining the desired end instead of the natural and logical method, we presume to have been that which is stated in the early part of their first Report.

"We shall study," they say, "to interfere as little as possible with established rules, and in all new enactments to preserve the spirit and the analogies of existing institutions."

31. Those commissioners, it must be remembered, were devising a reform for one system of law, and that system the most artificial and complex the world has ever seen. We, on the other hand, are devising a reform to be applied to three systems. Two of these, by which the rights of the vast majority of the inhabitants of the country are adjudicated, are not liable, at least as administered in our courts, to the imputation of technicality and complication, whatever other defects may be attributed to them. The third is the English system itself, but the most highly technical parts of it are not to be found in its practical administration in this country, either because the law itself is not in all respects the same, or because there are not the same subject matters on which it may operate.

Under these circumstances it seems to us clear that the advantage of attaining any object by a direct and rational method, much outweighs the advantage of preserving the spirit and analogy of existing institutions when the two methods happen to conflict.

32. We say this upon the assumption that the practical effect of the two modes is the same, but we conceive that is not exactly true in the present instance. For the sake of illustration we recur to the case which we alluded to in our Report on this subject, dated 2d February last, the case of Doe *dem.* Harding *v.* Cooke, 7 Bingham, 346.

In that case the lessor of the plaintiff recovered on the ground, it would seem, that 20 years' possession as owner raises a presumption of title. But if the defendant could have shown that there was a *jus tertii*, a title subsisting in some other person, then we apprehend that the lessor of the plaintiff could not have recovered. If any *jus tertii* had been proved, the remedy by ejectment of the person having that right would indeed have been barred by 20 years' adverse possession; but he might still have recovered in a writ of right, and at all events his title was untouched by any of the statutes of limitation, and would therefore have defeated the lessor of the plaintiff. This case was before the late statute. By that statute when the remedy is barred the right also is extinguished, so that if such a case were to occur now, the lessor of the plaintiff would recover as if he had acquired a title by positive prescription. But now let us suppose that the action is brought by the person having a title, and let us further suppose that Harding (the lessor of the plaintiff in the reported case), instead of having possessed for more than 20 years, had possessed for less than that period, say for 15 years, what would be the result of the present English law applied to such a state of facts? The result, we suppose, would be that although neither Harding nor Cooke had acquired the sort of negative title which the late statute confers on possessor for 20 years, yet the lessor of the plaintiff could not recover because he had been 20 years out of possession*.

33. It

* If the supposition in the text is erroneous, that is to say, if, under the English law as it now stands, the lessor of the plaintiff could recover, notwithstanding that he had been more than 20 years out of possession, then the effect of introducing positive prescription *eo nomine*, would not be to make in this respect any change in the substance of the law, but merely to make the language of the law a direct expression of its effect.

We subjoin the case of Doe *dem.* Harding *v.* Cooke, which is well worth the consideration of those who have to legislate upon the subject.

29 Jan. 1831. Ejectment. The plaintiff proved 20 years' possession; the defendant, 10 years following the 20. Held, that the plaintiff was entitled to recover.

Doe dem. *Harding* v. *Cooke.*

Ejectment.—At the trial before Vaughan B., last Devon assizes, the lessor of the plaintiff proved that his father had let the premises, and received the rent from 1797 to 1811, and that the lessor of the plaintiff had received the rent from 1816 to 1819, a higher rent than had been paid to his father. It did not appear that the father had any other son.

The defendant proved that he had been in possession ever since 1819.

A verdict

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33. It was, we presume, with a view to prevent this sort of inconsistency and inconvenience, that the Real Property Commissioners recommended—"That wherever by the provisions aforesaid all remedy is barred, the right shall be considered extinguished to the party out of possession and absolutely vested in the party in possession." Proposition 37, First Report, p. 80.

34. If this recommendation had been adopted by the legislature, the inconsistency and inconvenience in question would have been prevented. But then another inconsistency and inconvenience would have been produced, for then the possession of Cooke, which was only of 10 years duration, would have conferred upon him the positive title which it is evident that the legislature only desired to confer upon a possessor for 20 years.

35. It was perhaps because the legislature thought this last inconsistency and inconvenience the greatest of the two, that it omitted to adopt the provision recommended by the Commissioners; at all events it is not adopted in the statute.

36. Both these inconsistencies and inconveniences are avoided by making positive prescription the principle from which we set out. The extinction of right to the party out of possession flows as a logical consequence from the creation of right to the party in possession, and the barring of the remedy again flows as a logical consequence from the extinction of right.

37. The topics which remain to be noticed are of less general importance.

38. It does not distinctly appear that Mr. Prinsep considers the period of prescription proposed by us for mortgagees as in itself too long, but he considers it inconsistent in us to propose a period five times as long as that provided for other cases; what he says upon the subject is to be found amongst his arguments against the period of 12 years, and is as follows:—

"The Law Commission itself has admitted the necessity of extending the period of limitation in the case of mortgage or deposit, to no less than five times the ordinary period, although suits by the mortgagee, &c. for recovery of money are somewhat inconsistently limited to six years, by which arrangement the creditor will be compelled to retain on his hands, a redeemable, and therefore often an unsaleable property, for 24 years if personalty and 48 if realty."

39. We

A verdict having been found for the plaintiff,

Wilde, Serjeant, obtained a rule *nisi* for a new trial, on the ground that the lessor of the plaintiff had shown no title as against one who had been 10 years in possession.

Jones, Serjeant, showed cause. Twenty years' possession gives a *primâ facie* right to bring ejectment (Stokes *v.* Berry, Stocker *v.* Burny, Denn *v.* Barnard). If so, no counter presumption can arise from any possession of shorter duration, and the lessor of the plaintiff must succeed, unless the defendant shows a subsequent title by some other means. If 10 years' subsequent possession were sufficient, why not five, or one, or less than one?

Wilde: The lessor of the plaintiff must recover on the strength of his own title, not on the weakness of the defendant's. Actual possession for the last 10 years is a good *primâ facie* title as against the preceding 20, and it is for the plaintiff to show why he was out of possession for the last 10. In the cases referred to, the possession of the lessor of the plaintiff continued down to the time of the ouster. The defendant is not called upon to disclose the particulars of his title, because the lessor of the plaintiff may formerly have held the same property.

Tindal, C. J.: In this case it was proved that the elder Harding and his son held the premises for 23 years, and during that time received and increased the rent, an unequivocal act of ownership, from which the law presumes a seisin in fee. The father died seised, and the lessor of the plaintiff is the only son who is shown to have survived him. That would be enough, even in a writ of right, to call on the tenant to establish a stronger claim.

It is admitted, on the part of the defendant, that this would have been sufficient, if the ejectment had been brought within a year or two after the lessor of the plaintiff had been out of possession. But if two years would not have preponderated against the lessor of the plaintiff, I cannot see why any period short of 20 years should be supposed to raise a counter presumption sufficient to outweigh the presumption arising from the first 20 years. In many cases it would be extremely hard to cast on the lessor of the plaintiff the burthen of showing how the defendant came into possession. The lessor of the plaintiff may have been an infant, or out of the kingdom at the time. The earlier presumption, therefore, must prevail till a better title is shown.

Park, J.: We alter no rule of law by deciding in favour of the lessor of the plaintiff. He has shown a presumptive title, arising out of 23 years' possession. The defendant sets up a later possession of 10 years. There is presumption against presumption, which throws the defendant upon establishing, if he can, a title of a higher description. If the property had been sold, it was easy for the defendant, who asserted the sale, to prove it; and no injustice can be done, because even now he may prove it in another ejectment.

Bosanquet, J.: Concurred.

Alderson, J.: The defendant relies either on his own title or the *jus tertii*, but he has failed to show either the one or the other.

Rule discharged.

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39. We have not much to object to these remarks so far as they relate to Europeans, but our provisions on the subject of mortgages and deposits were framed with reference to the habits of the great bulk of the people.

Amongst them it is common for the possession to be left for very long periods with the mortgagee or depositary, and then to be restored to the owner. This is perfectly understood by both parties, and there is consequently nothing in such cases which can be looked upon as adverse possession.

40. The question for the legislature seems rather to be whether any duration of this kind of possession should give a title, than whether its duration for the ordinary period provided in the case of adverse possession, should do so.

41. We think that such arrangements are inconvenient and that it is right to discourage them. But for this purpose it would surely be far too strong a measure to put a possession which is contemplated and intended by both parties upon the same footing as adverse possession.

42. "The disallowance of coverture as a disability, exempting from limitation, would, Mr. Prinsep thinks, in the case of Christian females (or any but Hindoo and Mahomedan), be a denial of justice, so long as the law shall leave them under incapacity to sue."

43. To us it seems that the identity of interest between husband and wife is in general sufficient to ensure attention to her pecuniary claims against third persons, and even in a case of hostility between the parties, the husband would hardly think of gratifying his animosity by omitting to enforce such claims.

If, however, the disability of coverture be discontinued in the case of English women, it would be necessary to provide (which we have hitherto omitted to do) that they should have the benefit of any disability of their husbands, and at this stage we think it better to abandon the proposed change in the law than to frame such provisions.

44. Mr. Prinsep thinks that "a claimant who prefers his claim to an incompetent tribunal is surely not more deserving than one who prefers it defectively to a competent one and fails to recover."

45. The difference between the two cases is that in the former it will generally be found that the tribunal has given some kind of sanction, express or tacit, to the mistake of the party.

46. We need say nothing here regarding specialties, as we have already made changes in the Draft Act which obviate Mr. Prinsep's objections.

47. Mr. Prinsep's last objection is thus stated:

"One more point I will remark upon, and that is the provision contained in Section XXVIII. of the draft Act, abolishing all limitation whatever in respect of public property, or rights, or suits for recovery of revenue, or of any public claim whatever. It has been the boast of recent English legislation that in the matter of limitation it has laboured to put limits to the claims of the Crown. It is strange to find a contrary course taken for the advantage of a delegated authority."

48. To show that instead of abolishing all limitation whatever, &c. we have abolished nothing whatever, it is only necessary to cite the section in question, which runs thus:

"Section XXVIII. And it is hereby provided, that this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue, or for any public claim whatever."

49. We did not choose upon this occasion to enter upon the perplexed question of Resumption Laws, but we have certainly not said one word, either in our Report or in our Draft Act, from which it can be justly inferred that we are disposed to take a course contrary to that which Mr. Prinsep says has been the boast of recent English legislation.

We submit this our Report for the consideration of your Honor in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Elliott.
H. Borradaile.

REPORT from the Indian Law Commissioners to the Honourable the President of the Council of India in Council, dated 25 March 1843.

Honourable Sir,

1. We have the honour to report further upon the proposed Act concerning the acquirement and extinction of rights by prescription and for the limitation of suits with reference to the letters from the secretary to the Government North Western Provinces, and letters from officers subject to that government, transmitted to us by Mr. Officiating Secretary Halliday, under date the 28th October, and subsequently under date the 13th December, as noted in the margin.

Letter from Secretary to Government N. W. P. dated 18 August 1842, enclosing letters
From H. H. Thomas, Esq.
„ H. B. Harington, Esq.
„ D. B. Morrieson, Esq.
„ J. W. Begbie, Esq.
Letter from Secretary to Government N. W. P. dated 26 July 1842, enclosing letters
From C. M. Caldecott, Esq.
„ J. Thomason, Esq.
From H. Pidcock, Esq. and from the Register Sudder Dewanny Adawlut Allahabad.

2. In these papers we have the opinions of the Lieutenant-governor of the judges of the Sudder Adawlut, and of other experienced officers consulted by the government, upon the principles of the proposed enactment, and upon the rules and provisions for carrying them into effect.

3. We find that the judges of the Sudder Court collectively have expressed their approval of the proposed law, and that Mr. Thomas, a judge of that court, who has delivered his sentiments separately, also approves of it "as generally calculated to discourage vexatious litigation, and to give stability to the possession of property, and as likely in the course of time to render the natives stricter and more punctual in their dealings with each other."

4. Mr. Morrieson has "a favorable opinion of the law generally, and thinks that practical benefit may be reasonably expected to result from its enactment." Mr. Begbie considers it to be "highly expedient and calculated to repress litigation." Mr. Caldecott "heartily approves of the general principle of the Act," and thinks "that the provisions contained in it are generally unobjectionable in principle." Mr. Pidcock thinks the "Act well calculated to meet the objects contemplated by the Legislature."

5. Mr. Harington, who has considered the subject very attentively, thus expresses himself: "A modification of the existing law of limitation appears to me highly advisable, and indeed necessary, and I am disposed strongly to recommend that the alterations proposed by the Law Commissioners be adopted as regards both the limitation of the time now allowed for bringing civil actions, and the period which the Law Commissioners would substitute in lieu thereof, for the different descriptions of suits mentioned in the proposed Act, and which with the exceptions introduced by them, as respects infancy, idiotcy, lunacy, or absence under certain circumstances, appear, as far as I am able to judge, amply sufficient for the ends of justice, and well suited to the character of the different classes of suits."

6. With regard to the provision for the acquirement of a title by prescription, Mr. Harington hesitates to offer an opinion, not feeling himself sufficiently master of the subject to admit of his forming a satisfactory judgment on the merits of it.

7. On the other hand the Lieutenant-governor strongly expresses his disapprobation of the proposed law, "asserting with some confidence, upon the strength of his own judicial experience, that the existing laws, if properly administered, are amply sufficient for the wants of the people of these provinces," and stating that he "is inclined to think Mr. Thomason's view is correct; and that if the proposed enactment does not prove destructive of the established rights of the agricultural community in Putteedaree villages, it will only be because of its complexity soon rendering the whole a dead letter."

8. With regard to the sufficiency of the existing laws, with all deference to the personal experience of the Lieutenant-governor, we cannot accept his opinion founded upon that experience as decisive, when we find that it is not supported by any one of the officers whom he consulted, while a contrary opinion is expressed strongly by several of them and is implied in the general approbation of the Act intended to supersede those laws, by both the Sudder Courts of this presidency and the Sudder Court of Bombay.

The Sudder Court at Madras has not expressed an opinion.

9. The only definite objection to the principle of the proposed enactment stated

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Enclosure in letter from Secy. to Govt. N. W. P. dated 26 July 1842.

stated by the Lieutenant-governor is that above-mentioned, namely, that it is likely to prove destructive to the established rights of the agricultural community in Putteedaree villages. But it seems to be a gratuitous assumption that it is calculated to destroy any rights now appertaining to the agricultural community in the particular description of villages referred to. The Lieutenant-governor has given no reason for his opinion of the destructive tendency of the law in regard to the rights of persons holding under the Putteedaree tenure. But as he appears to have adopted the opinion from Mr. Thomason, he may be supposed to concur in the reasoning of that gentleman, which is to be found in the 10th paragraph of his letter dated 21st June 1842, noted above.

10. Mr. Thomason says, " the law makes no provision for the maintenance of a right depending on prescription, which can only be exercised occasionally. An instance may be found in one of the incidents of a Byachara tenure, as defined in paragraph 234 of a printed Resolution of Government passed on 1st August 1822, before the enactment of Regulation VII. 1822. In this case ' although the lands possessed by each sharer and body of sharers, and the quota of Jumma payable by each, were distinctly ascertained at the period of settlement, they still continued liable to repartition whenever the Jumma payable by any one became greatly disproportioned to the relative value of his lands.' Now, in such a case, a valuable privilege attaching to the land consists in the power of claiming partition and readjustment of the Jumma. But there might be no occasion to make the demand for 12 years, whilst at the close of the term section 3 would appear to extinguish the right."

11. Taking this case as it is represented by Mr. Thomason, it appears to us that the privilege in question will not be in any way affected by the proposed law. Every member of a Byachara community by the condition of his tenure, as it is described, holds his share of the village lands under an obligation to surrender them in order to a repartition of the whole and a readjustment of the Jumma, whenever a case can be made out, according to the terms of the condition, for such repartition and readjustment. By section 12, Regulation VII. of 1822, the collector is authorised to make a fresh partition of the lands and adjustment of the Jumma on the demand of the parties entitled to claim it. A person dispossessed of particular lands by such a partition may institute a regular suit to recover them, but the courts are competent only to inquire into the existence of the usage or condition, and if that be admitted or established there can be no further question on the subject. This law will remain to govern all such cases notwithstanding the proposed enactment, in which there is nothing contrary to it. The collectors' authority in such cases will not be limited by the new law, nor will that of the courts be extended.

12. It may be observed, however, that if it were the intention of the Legislature that the particular conditions of the Byachara tenure mentioned in section 12, Regulation VII. of 1822, should continue generally operative in future, the purpose is liable to be defeated by the restriction in section 20 of the same Regulation, by which it is prescribed that collectors ordinarily shall exercise the powers vested in them by section 12, only when they are engaged in making or revising a settlement, and not at other times without special authority from Government.

13. But supposing it to be competent to the courts to entertain suits to compel the repartition of the lands and the readjustment of the Jumma in villages under the Byachara tenure, we do not think that the section of the proposed Act referred to by Mr. Thomason would be applicable to the case. It appears to us that the lands of the village must be regarded as the common property of the body of shareholders, and the possession of particular lands by each individual as the possession of a tenant holding under those shareholders, and therefore not adverse, for whatever length of time it may continue, to the right and interest of the community, which will still subsist intact and integral. On this view, which appears to be unquestionably the right one, the case will fall to be determined under section 1, by which no possession that has not been held adversely, and on the ground of proprietorship, can give a proprietary title by prescription*.

Section 3.

14. If

* It has been held by the Sudder Dewanny Adawlut, that lapse of time does not bar the right to a division of a joint estate, though the several parties may have entered into separate engagements for their respective shares, such shares never having been actually separated. The decision we apprehend would be the same under the proposed law, upon the principle that there had not been an adverse possession —*Vide* Reports Sudder Dewanny Adawlut, vol. iii. p. 219.

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14. If indeed the tenant of particular lands does anything inconsistent with the nature of his tenancy, as, for example, if he should resist the demand for a repartition on the ground that his land was not liable thereto, his possession may become adverse to the body of shareholders, and prescription may begin to run: or, if such a tenant were to hold so long that the original constitution of the village could no longer be proved, it would be impossible to show that his possession was not adverse; but this is clearly a difficulty in fact and not in law.

15. We proceed to consider the objections to the principle of the proposed law, and to particular provisions of it, which we find in Mr. Thomason's letter.

16. After observing in para. 3, that the proposed law "will work a very great change in Bombay," Mr. Thomason proceeds to say that it will also "cause a considerable change in the practice of this Government." He then shows in what way he supposes this will take place; but in our opinion the practice of this Government is not such as Mr. Thomason imagines, and we think that very serious inconvenience would result from the adoption of such a practice.

"Section 3, 1805," Mr. Thomason observes, "merely prohibits the regularly appointed civil courts from taking cognizance of a claim after 12 years, except in certain cases. But the claim is still in existence, and it is open to the Government, on sufficient cause shown, to revive and admit such claims by a special enactment, either before the ordinary courts, or any special court. Thus, by Regulations I. 1821, and I. 1823, a special commission was appointed to redress a particular class of wrongs, without reference to any limitation of time, and a similar power was generally understood to be vested in collectors employed in settlements by Regulation IV. 1828."

17. The instance of Regulations I. of 1821, and I. of 1823, by no means proves that it is the practice of the Legislature to prevent the occasionally injurious operation of the existing law of limitation in particular cases. The Government, by the first of those Regulations, interfered in its legislative capacity to remedy a great wrong by which a large class of people suffered through fraudulent and iniquitous practices of its own officers, and their relations, connections, and dependants. The object, as expressed in the title of Regulation I. of 1821, was to provide for the special "investigation and decision of claims to recover possession of land illegally or wrongfully disposed of by public sale, or lost through private transfers effected through undue influence." Afterwards, by Regulation I. of 1823, commissioners acting under Regulation I. of 1821 were empowered to give relief to parties deprived of their rights by illegal sales, although there might be no proof that undue influence was exercised by any public officer to their injury. For a public object of great moment, the Government on that occasion exercised its legislative power, dispensing with, or superseding, the established law, for the occasion. It was an extreme measure, not to be followed as a precedent, except under at least equally cogent circumstances, and for an equally important public object. If the Government were to take upon itself to exercise its legislative power in all particular cases in which the laws of limitation may operate harshly, we are satisfied that it would do much more harm than good, even though it should institute the most careful previous inquiry into the merits of the case; and we are also satisfied that, constituted as the Legislature of India is, no adequate means exist for conducting such an inquiry; and again, that, if such means did exist, the Legislature would be overburthened with the petitions of individuals claiming to be relieved from the laws of limitation.

18. Mr. Thomason proceeds as follows: "Such a power as was conferred by these enactment may be well or ill exercised, but it cannot be denied that by our position as foreigners in a land where our knowledge of the feelings of the people and customs of the country is at best very limited, many wrongs are likely to be inflicted and sanctioned, which may fail of remedy in 12 years. Such wrongs the Legislature pledges itself by the proposed Act not to remedy, because it creates in an opposite party a legal title. There is in our system a promptitude of unpremeditated injustice, and tardiness of remedy, which renders such a principle hazardous."

"A known example will serve to illustrate possible danger."

"As the law now stands, every suit of a value under 1,000 rupees is finally disposed of by the Zillah judge. In such suits the Sudder Dewanny Adawlut can exercise no jurisdiction. The civil judge may take a view of one case, or of one class of cases, contrary to written law, contrary to the express declaration of the superior court, and decide wrongfully. No legal power of setting him right

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exists without a new law. The law may be opposed, delayed, or forgotten. If by section 19 of the proposed Act, a remedy might be found in individual cases, yet none would exist in the numerous parallel cases when the parties had prudently abstained from prosecuting their suit in the face of established precedent."

19. This appears to us very startling doctrine. No doubt the courts may mistake the law, no doubt persons may be led by such mistakes to abstain from prosecuting their rights until the limited time has elapsed; but we believe this to be an irremediable evil, that is to say, an evil which cannot be remedied without the risk of producing a greater. Assuming, however, that it is not so, assuming that the evil is susceptible of remedy, the appropriate remedy would be to make this class of cases one of the exceptions in the Act, and thus to bring the question, whether any given individual case is or is not one of the class, before the ordinary courts of judicature, which must always be much better organs for such an investigation than the Government of India.

20. One obvious mode of reducing to the smallest amount the particular evil which Mr. Thomason selects as his illustration is to enact (as we have already recommended) that the final decision on points of law, so far as regards India, should always rest with the Sudder Court. When this is done we believe that any evil which may result from mistaken decisions must be borne with.

21. According to Mr. Thomason's notion, if we have rightly understood it, the Indian Legislature and the extraordinary courts set up by it on special occasions, perform in respect of limitation, the same functions (but to a greater and more questionable extent) as, before the late statute, were performed by the English courts of equity. Before the late statute, which expressly bound them, the courts of equity did not consider themselves bound by the statutes of limitation; in ordinary cases they followed the principle of those statutes, but departed from it in extraordinary cases, particularly in cases of fraud. This system appears to us much preferable to that which Mr. Thomason supposes to be the system of the Indian Government. The previous inquiry as to whether the case was one calling for extraordinary interference, and the inquiry necessary to the decision of the case itself, were both performed by the same functionary, and that a functionary not created for the occasion, but permanently occupied in judicial investigations. Yet this discretionary mode of relaxing the laws of limitation laid down by the Legislature, has now been abandoned in England. The courts of equity are as strictly bound by the late statute as the courts of law, and provision is made in the statute itself for cases of fraud, which was the main if not the only ground on which the courts of equity used to disregard the legal limitation. We have copied this provision in our Act, and, so far as regards the supreme courts sitting in equity, the change is perfectly analogous to that produced by the English statute.

22. As regards the Mofussil we considered that we were introducing an improvement in substituting the principle of the English statute, that is to say, the principle of a postponed commencement of limitation for the principle of an extended period of limitation which is contained in the Codes of Bengal and Bombay. We did not mean it as a substitution for any such inconvenient and dangerous principle or practice as that which Mr. Thomason supposes to be adopted by the Indian Legislature. If such is the principle of the Indian Legislature under the existing law, then we think our recommendation will have the beneficial effect of diminishing to a great extent the operation of that principle. The Legislature, indeed, cannot tie up its own hands, but having armed the courts with power to do justice in cases of fraud, the supposed grounds for its interference with what is the proper business of judicature would be very much narrowed.

23. In citing Regulation IV. of 1828 in support of his argument, Mr. Thomason appears to us to have misapprehended its import. The intention of the Legislature in passing that law, as set forth in the preamble, was to confer generally on revenue officers making or revising settlements according to the provisions of Regulation VII. 1822, the judicial powers which, by section 16 of that Regulation, the Government, in its executive capacity, was authorized to confer upon them by special grant, and likewise to provide that those officers should not be debarred from the exercise of that jurisdiction by any summary decision passed by magistrates or joint magistrates by virtue of Regulation XV. 1824.

24. The object contemplated in the enactment of section 16, Regulation VII. 1822, is set forth in the following extracts (paras. 8 and 9) of the resolutions of Government

Government in the Territorial Department, dated the 8th May 1823, regarding the judicial powers of collectors under that Regulation :—

Para. 8. " There is indeed one power which, in the judgment of Government, collectors should exercise only in villages which may be actually under settlement, viz. that of deciding on the question of title, and of interfering with possession under the provisions contained in the 16th section of the Regulation. Such a provision appeared to be necessary from the difficulty that is frequently experienced in separating the question of possession from that of property; and especially, in Putteedaree estates, of distinguishing questions relating to the nature and extent of the interests held in given parcels of land, from those which regard the right of actual occupancy."

Para. 9. " The power, however, is one which would not be exercised beyond the necessity of the case, and should be confined, as far as practicable, to cases in which, as in boundary disputes, the fact of previous lawful possession cannot be ascertained, or in which the existence of a custom sanctioning the periodical distribution of land among the co-sharers shall be established. In general the collectors are to confine themselves to the ascertainment of the actual state of possession, and to the determination of the nature and extent of the interests held in the lands possessed, that is, of the privileges and the obligations belonging to the several tenures."

25. There may be some doubt as to the precise meaning of the foregoing passages, but it is at least clear that there is nothing in the rule itself, nor in the exposition of the views of the Government respecting it, pointing to the conclusion that the revenue officers were to exercise these judicial powers to the prejudice of persons who might have held uninterrupted possession for a period sufficient to bar the institution of a suit under the general law of limitation.

26. Mr. Thomason passes from his general objection to the principle of the proposed law, and proceeds to point out what he considers to be objections to particular provisions.

27. In the 9th para. of his letter Mr. Thomason, construing sections 2 and 3 of the proposed Act as applicable to the occupation of lands by tenants holding of the proprietor, observes as follows :—

Sections 2 and 3 may have " very extensive effect. Tenants at will, by failure of the proprietor of the land to demand an increase of revenue for 12 years, would be changed into tenants with right of occupation at fixed rates; and that notwithstanding they have been judicially declared at the time of settlement to be tenants at will. As the law, sections 2 and 3, at present stands, it would appear that the execution of a written agreement between them would bar the creation of the right in the tenant, but that the power of the proprietor to exercise a contrary right would be extinct."

28. It will be a sufficient answer to these remarks to mention that the sections in question are not meant to apply to the " benefits, liberties, or privileges" of tenants, in opposition to the interests of the proprietors of the lands occupied by them ; but to the incorporeal rights in immoveable property which are technically signified by the terms " Servitudes" and " Easements" " rights *in re aliená*," as explained in the 4th para. of our first Report on this subject; rights generally against tenants as well as against proprietors, restricting them in the use of the property affected, or giving certain uses to others against them.

29. It has occurred to us, however, on the further consideration we have given to the subject on this occasion, that it may be advisable to introduce into the Act, after section 1, which gives a title by prescription to a person who has held possession of immoveable property " as proprietor," or " as by virtue of a proprietary right," as it is expressed in our first Report, another section in like manner giving a title to the perpetual occupancy of land under a proprietor, subject to the conditions incident to such a tenure, by reason of the uninterrupted occupancy and use of the same for 12 years, during which the tenant has claimed to hold of his own right and not at the will of the proprietor. What is here intended is a well-known tenure of ryots in India, designated in different parts by different terms, which is hereditary, and approaches very near to a proprietary right, but it is not recognized as such, as there is another superior right over the same land which appears to be the proper right of the landlord.

30. We are inclined to think that a positive right, such as this, ought to be acquirable by prescription by a tenant who has been suffered to hold over the period of 12 years without a lease, and while refusing to acknowledge himself a tenant at will,

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will, prescription beginning to run from the time when he shall have renounced the condition of a tenant at will either expressly or by overt Act. Of course a lease or written agreement would preclude prescription, and where a ryot's tenure is described in any authoritative public register, there must be good proof of the fact of his having renounced that tenure, and of the time when he did so, to warrant prescription in his favour.

31. Mr. Thomason suggests that the words "or be created by some law or judicial decision" should be added to section 2; but under the explanation given above of the limited application of this section such addition does not appear to us to be requisite.

32. A judicial decision in a case of this kind can only give effect to a pre-existing right. We can only conceive of benefits, &c. in re alienâ created by a specific law, as affecting property belonging to the State, where the Government may have granted such benefits, &c. by an instrument in the form of a legislative enactment. And such an Act we apprehend would fall within the proviso at the end of section 2 equally with any private deed or writing. The design is to allow prescription by reason of enjoyment for 12 years, when it is not barred by a formal deed or writing. When such a deed exists, setting forth the conditions on which the enjoyment was had, prescription cannot have place. A legislative Act is only a more formal deed.

33. It was meant by section 3 that a *perpetual* right of the nature there intended "acquired by prescription or *otherwise*" should be extinguished by disuse for 12 years. A right for a limited period cannot be acquired by prescription; but as such a right may be conferred by express grant, it appears to be advisable to introduce the word "perpetual" into the section, lest it should be thought that a right conferred by grant would be extinguished by disuse for 12 years, although the period specified in the grant had not expired, which is not intended.

P. 12. 34. Mr. Thomason remarks that no provision appears to be made for titles accruing from occasional exercise at long intervals, such as family customs of inheritance, &c. We do not clearly understand to what cases Mr. Thomason particularly refers, and he himself observes that they may rather serve to point out possible risks of the proposed principle than to call for special legislation to define and confirm them.

35. He says that the family customs of inheritance to which he alludes are especially recognised by our courts. If so, it appears to us that, as respects property and offices whenever they would avail under the existing rules of limitation, they would avail likewise under the proposed law, which aims at nothing more than to settle property by giving a title by prescription through possession for such a length of time as would bar an action to disturb the possession under those rules, it being specially declared that "when an adverse title shall have accrued after the possession was acquired, the possession shall be deemed adverse to the parties interested therein (only) from the time at which such title accrued," and no provision seems to be requisite beyond this.

Section 1. Section 5.

Sec. 2 and 3. 36. In regard to such of the incorporeal rights to which sections 2 and 3 are applicable as can only be exercised occasionally, at considerable and uncertain intervals, since a right cannot be said to be disused merely because it has not been exercised when there has been no occasion for the exercise of it, no such right could be extinguished under section 3 unless it were proved that there had been occasion to use it, as under the present rules of limitation an action for such a right would not be barred by length of time unless it was shown that there had been opportunity to use it in that time. It may be a difficult question to determine whether the disuse of a right on a single occasion for the exercise of it, followed by a lapse of time sufficient for prescription, should extinguish the right or bar an action for its recovery when during that time no further occasion had offered: but the proposed law makes no difference in this respect; whether the prescription be positive or negative, the question would be the same, and must be determined by the same reason.

37. From the observations in paragraphs 14 and 15 of Mr. Thomason's letter, it would seem that he had not read our Report upon the proposed Act, for the reasons for the provisions upon which he comments, which he says are not evident, are there stated. With respect to the distinction between trustees and depositaries and mortgagees—by the term "trustees," we meant what is popularly and in general technically understood by it, namely, persons to whom property is conveyed in trust for specific purposes by wills, settlements, and other formal deeds;

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deeds; by "depositaries," we meant persons holding possession of moveable property originally delivered to them to be kept for the owner, or in pledge as security for a debt, in contradistinction from "mortgagees," or persons holding immoveable property in pledge. It may be presumed of mortgagors and depositors who have done nothing to recover the property, or to obtain an acknowledgment of their right to it, from the mortgagees and depositaries, during the lengthened periods stated in the Act, that they have abandoned their right, and that the possession has been adverse to them for a period sufficient to give a title by prescription; but with regard to trust property committed to a trustee for specific purposes, such a presumption can never be made while the trust remains unfulfilled, the trustee by the subsistence of the trust being incapable of adverse possession. Seeing, however, that the term "depositary" may be construed in a more limited sense than we intended, we propose to add, in sections 7 and 8 of the revised draft, the words "pawnee" and "pawner" to meet expressly the case of moveable property pledged for a debt.

38. That Mr. Thomason had not seen our Report appears also from his observations on section 30 of the original draft Act, by which its operation was restricted to the Company's courts. If he had perused our Report he would have been aware that we recommended the extension of the Act to Her Majesty's courts.

39. With reference to the observations of Mr. Thomason on the provisions relative to disability from absence in sections 17* and 22 of the proposed Act, we have to remark that China and Affghanistan not being contiguous to the territories of the East India Company, absence in either might be pleaded under those provisions.

P. 16.
* Erroneously cited as 31.

40. Mr. Thomason suggests that "a fair exception might be allowed to all persons in the military employ of Government during actual service in the field." Mr. Morrieson has offered a similar suggestion in favour of "military men, or men in public employ" absent on military service. He instances the service in China and Affghanistan as likely to keep many of our soldiers and others absent for more than five years. But experience has proved that the period of five years is sufficient even for such extraordinary cases. We suppose that no military man will have been absent on either service so long as five years. It is to be remembered that the five years is additional to the ordinary limitation. A man returning from service after five years, will have the remaining portion of the ordinary period of 6 or 12 years, as the case may be, to sue for the establishment of any right, and prescription will not give a title against him until the expiration of such period.

Enclosure in letter from Secretary to Govt. N. W. P., dated 18 August, (p. 8.)

41. Mr. Caldecott has suggested that "the provisions of section 22 should be extended to all parties in Government employ serving at a distance of more than 200 miles from the nearest court at which their claims could be heard." We do not think that such an exception from the general rule is advisable. With reference to the native soldiers, whom he has particularly in view, it is to be observed that the provisions of the existing Regulations give them, in the Presidency of Bengal, and also in Madras, peculiar facilities for the institution and defence of suits.

Enclosure from Secretary to Govt. N. W. P., dated 26 July 1842.

Bengal Reg. XX. of 1816.
Madras Reg. VIII. of 1817.

42. Having considered the general objections to the principle of the proposed law, and the observations and suggestions upon particular provisions of it which we find in Mr. Thomason's letter, we proceed to consider in their order those sections of the Draft Act which are made the subject of particular remark by other officers, in the papers before us.

43. In the first section Mr. Harington proposes to substitute for the words "as proprietor," the words in the character of proprietor, and "in exercise of all the rights of ownership." We do not perceive that the meaning would be rendered more clear by his alteration. The words which stand in the draft were well considered, and we think that they adequately and definitely express what is intended.

Section 1.
Enclosure in letter from Secretary to Govt. N. W. P., 18 August (p. 16).

44. Mr. Harington states that he does not perceive the exact bearing of the second proviso in this section, viz., that nothing therein contained "shall be construed to affect any rights arising from possession of moveable property now recognized by law." In our Report the drift of this proviso is thus explained; "As the mere fact of possession already gives a right in respect to moveable property until an adverse title shall be proved, and sometimes against an adverse title, we have introduced a proviso that the proposed prescription shall not be construed to affect rights now arising from possession;" that is to say, that although a possession of six years is required to make a title by prescription in the case of moveable

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able property, possession for a shorter period shall still avail to the same extent and in the same degree as it has availed heretofore in favour of the possessor. If, therefore, a case should come before a judge in which, by the law applicable to it, the possession of any moveable property *ipso facto* gives the possessor a right to it immediately, the judge would maintain that right, notwithstanding the provisions of the present Act, which give a title by prescription only after possession for a certain period. In our second Report we adverted to the provision in question, and mentioned the case of goods and chattels purchased in market overt as an instance of its applicability under English law.

Dated 1 Oct. 1842, p. 12.

P. 18.

45. Mr. Harington suggests with regard to section 2 and also sections 7, and 14, that deeds containing acknowledgments such as are intended thereby, should be written on stamped paper. Mr. Caldecott again suggests that such deeds should not have effect unless they are registered. Upon these suggestions it may be sufficient to observe that they are beyond the scope of this Act.

Enclosure in letter from Sec. to Govt. N. W. P., 26 July.

46. Mr. Harington proposes to omit in section 4, the words "in one month," and to add, after "any law now in force," the words "or may be hereafter enacted." But the object is to prescribe, once for all, the period of one month as that within which the applications in question must be made (except where a different period is fixed by any law now in force), so as to obviate the necessity of future legislation. The alteration proposed is therefore not requisite, and it is moreover superfluous, for the Legislature cannot tie up its own hands, and cannot prohibit itself from enacting whatever it may think fit hereafter.

P. 20 and 24.

47. With regard to section 5, and again with regard to section 9, Mr. Harington observes that "it is much to be desired that the wording should be simplified," in order to bring it down "more to the level of the understanding of the courts generally by which the law will have to be administered," and with a view to facilitate translation, considering that the great majority of our judges are ignorant of English.

From Secretary to Govt. N. W. P., dated 18 August.

48. The Lieutenant-governor expresses his entire concurrence in the remarks of Mr. Harington, and adds on his own part that "there are whole passages in the draft, such as the concluding provision of the 1st section, and the whole of the 5th and 9th sections, that have baffled his most earnest endeavours to attain to a clear comprehension of the real meaning." The 4th para. of the letter from the secretary to the Lieutenant-governor is as follows: "Now as laws are intended for the protection of the simple, it is useless to clothe them in terms beyond the power of any simple understanding to comprehend, and therefore, as well as to bring it within the compass of translation, it is in the opinion of the Lieutenant-governor absolutely necessary that the draft should be recast before it be suffered to pass into a law."

49. The law should undoubtedly be expressed in terms as easily intelligible as the nature of the subject matter will admit, and if any terms can be suggested more easily intelligible than those employed by us, and which will adequately express the same thing, by all means let those terms be adopted. But if such serms cannot be found, then it is no objection to those employed by us to say that they are not level to the capacity of all persons intended to be protected.

50. Of the sections particularly referred to in section 5 there is not one technical expression, and in section 9 the terms "reversion" and "remainder" are the only technical ones that will be found. Their general signification we apprehend is well known, as denoting expectancies depending upon different circumstances or contingencies, as distinguished from interests actually possessed and enjoyed. A reversion is an estate or interest which by law will return to the grantor or his heirs after the grant is over. A remainder is an estate or interest which by express settlement is to be enjoyed after another estate or interest is determined. Examples of reversions will be found in this country in the case of life grants, which are not uncommonly given by zemindars to their wives and other members of their families, whereby particular villages or pergunnahs of their Zemindaries are made over to them to be held as a separate possession with full enjoyment of the rents. Such grants give a life interest only; and on the lapse of the life the estate or interest returns to the grantor or his heir. Probably examples of remainders also may be found in settlements made by Hindoos and Mahomedans in regard to property which is absolutely at their disposal. It is likely, at any rate, that such remainders will be commonly made by marriage settlements, &c. among the British residents and their descendants.

51. The intention of section 9 is to qualify the enactment in the last part of section

section 5, by which, when an adverse title shall have accrued after the possession upon which prescription is claimed was acquired, the possession shall be deemed adverse to the parties interested in that title from the time at which it accrued. Section 9 provides that when a party entitled to the present possession of any estate or interest incurs a forfeiture or commits some breach of condition, by which another party, having a right to the estate or interest in expectancy, becomes entitled to take the possession, and this latter shall have waived his action to recover thereupon, the actual possession, by whomsoever held, shall not be deemed adverse to him until the determination of the previous right.

52. To make this more clear we shall put the case of a life grant made by a Hindoo zemindar to his wife for her maintenance after his decease. The reversion will be to the heir of the grantor on the determination of the grant, either naturally by the death of the grantee, or by reason of any forfeiture. In such a case it is understood that by Hindoo law the grant would be forfeited by the unchastity of the widow; but for the sake of avoiding scandal and disgrace to the family, the heir would probably be unwilling to bring an action to recover thereupon. It would be hard, however, if possession acquired from the widow should be counted to his prejudice from the time that the title accrued to him by her becoming liable to the forfeiture. This section therefore provides that if he chooses to waive his action, possession shall not be reckoned adverse to him until the determination of the grant otherwise than by such forfeiture.

53. We propose to add to section 9 the words "otherwise than by such forfeiture or breach of condition," to make it clear that the natural determination of the previous right is meant.

54. Mr. Harington thinks that the provisions in section 7 on the subject of mortgages, which he appears to approve as far as they go, are not sufficient. He mentions cases for which a further provision appears to him to be requisite. They are cases in which the mortgaged land has been put in the possession of the mortgagee, under conditions for the liquidation of the principal and interest of the debt secured by the mortgage by a certain appropriation of the net proceeds of the land. Mr. Harington states that after the liquidation has been completed the mortgagors, instead of taking steps to recover possession of the land, "frequently allow their claim to remain in abeyance," and after the lapse of perhaps 30 or 40 years institute a suit to recover possession, and for 20 or 30 years' mesne profits. We do not think that under the existing laws an action for 20 or 30 years' mesne profits is admissible. We certainly did not intend to allow of such an action in the proposed law, and it seems to us that it is sufficiently guarded against. But under the proposed law an action might be brought for the recovery of the land from the mortgage at any time within 60 years from the date of the mortgage or a subsequent acknowledgment of it. We have stated our reasons for not cutting short this period. Mr. Caldecott recommends that it be contracted to 40 years in the case of immoveable property, and from 30 to 20 years in the case of moveable property. Mr. Harington does not distinctly state the rule which he considers advisable, but we gather that he would give the mortgagee a title by prescription after the lapse of twelve years from the date at which it appears by the accounts between him and the mortgagee that the debt was liquidated according to the conditions of the mortgage.

P. 22.

Enclosure in letter from Secretary to Govt. N. W. P., dated 26 July.

55. We think that if the mortgagee gave formal notice to the mortgagor of the liquidation of the debt and the consequent determination of the mortgage, he would be entitled to reckon his possession from the date of such notice as adverse, and to build upon it in due time a title by prescription.

56. To sections 8 and 16, by which the periods of positive and negative prescription in the case of a concealed fraud are made to run from the discovery thereof, or the time when with reasonable diligence it might have been discovered, objections are made by Mr. Thomas and Mr. Harington. Mr. Thomas objects to the qualification arising from the words "or with reasonable diligence." Mr. Harington observes, that although the provision regarding the discovery or knowledge of a fraud may be very reasonable, he fears that in practice it will be found extremely difficult of application, and that it may give rise to much abuse. He thinks the ordinary periods of limitation sufficient to admit of a defrauded party, with common diligence, discovering the injury done to him, except in cases of infancy and such like, for which separate provision is made. He observes that the decision of the point as to when the party might with reasonable diligence have become acquainted with the fraud practised upon him, must almost always depend rather

Enclosure in letter from Secretary to Govt. N. W. P., dated 18 August.
P. 23 and 30.

rather upon conjecture than actual proof. It will be a point generally to be determined by circumstantial evidence, and there is no doubt something in the argument of Mr. Harington as to the difficulty of applying the provision in question; but on the whole we agree with the framers of the statute from which it was adopted, that such a provision is desirable.

3 & 4 Wm. 4, c. 27, sec. 26.

57. Mr. Harington observes that in the rules for the limitation of actions suits for the rent of buildings are barred after one year, but that he cannot find any provision as to the period within which regular suits for arrears or exactions of rent must be brought. He thinks that they also should be required to be brought within a year. Mr. Pidcock again suggests that no suits for exaction or for arrears of rent should be admitted in any court unless instituted within three years.

Section 11, p. 25.

Enclosure in letter from Secretary to Govt. N. W. P., dated 26 July 1842.

58. The limitation of one year, as is explained in the draft, is intended to be applied to suits for debt only upon accounts subject by established custom to settlement by the month or a shorter period. It is not applicable, therefore, upon our principle, to suits relating to the rent of land the payment of which is not so regulated. Such suits will of course fall under the limitation of six years. At present they may be brought at any time within 12 years. The new limitation will therefore cut off one-half of the period now allowed. With the information we have on the subject we are not prepared to recommend a shorter limitation.

59. Upon the provision of section 11, which requires suits to alter or set aside summary decisions or orders of court to be brought within one year, Mr. Morrieson asks, would not the desirable object of this provision be more easily attained if the Court giving the summary decision or order were authorised to grant a period, not exceeding one year, for dissatisfied parties to bring suits to contest the award. Generally, he observes, from one to six months will be sufficient. We think it unadvisable to leave so much to discretion.

Enclosure from Secretary to Govt. N. W. P., dated 18 August 1842.

60. Mr. Harington suggests that the limitation of one year, applied to suits brought to alter or set aside summary awards by collectors, &c., in disputes regarding arrears and exaction of rent, should be applied also to summary orders of collectors (under section 18, Regulation VIII. of 1819,) awarding restoration of possession of lands to under-tenants illegally ousted therefrom, or refusing such restoration; and also to regular suits instituted by the ousted party (instead of having recourse to summary process) for the recovery of possession.

61. We do not find any express provision in section 18, Regulation VIII. of 1819, authorising proceedings such as are described by Mr. Harington. We observe, however, that the Sudder Dewanny Adawlut have ruled, that, in the spirit of the enactment, a summary order may be passed to restore possession to a ryot who has been unduly ejected from lands occupied by him. But such a rule cannot be referred to and sanctioned in an Act of Legislation as if it were a law.

Construction No. 475 of 1828.

62. With respect to regular suits to recover possession of lands by persons unduly ousted, we see no reason for applying to them a limitation other than that to which they will be subject under the revised Act, viz. six years.

Enclosure from Secretary to Govt. N. W. P., dated 26 July 1842.

63. Mr. Caldecott suggests that the limitation of one year instead of six years should be applied to suits for the enforcement of contracts. He does not state any particular reason for this suggestion, and we do not see any.

Enclosure from Secretary to Govt. N. W. P., dated 18 August 1842.

64. On the subject of legacies Mr. Morrieson asks, would it not be expedient to make it obligatory on executors to seek out and apprise legatees of the benefit to which they have become entitled. However expedient such an enactment might be, we need only observe that it is beyond the scope of the proposed Act.

65. With reference to the provision in section 12, that suits against trustees shall not be barred by any length of time, Mr. Morrieson suggests that after "trustees" the words "their heirs or successors" should be inserted, if it be not intended to to restrict the provision to the persons of the original trustees only. The provision was intended to apply to the representatives of trustees as well as to themselves personally, without reserve or restriction. But upon reconsideration it has appeared to us to be proper to impose a limitation to run from the decease of the original trustee. We propose therefore that sect. 12 of the draft be altered as follows, by the addition of the words underscored*—"Provided that suits against trustees shall not be barred by any length of time *during their lives, but that suits for the recovery of damages out of the assets of trustees after their decease, shall not be admitted unless they are instituted within the proper period of limitation according to the last section, reckoned from the decease of the trustees.*"

* Now printed in Italics.

66. A verbal

66. A verbal alteration in section 17 is proposed by the Sudder Court at Allahabad which appears to us unnecessary. Enclosure from Secretary to Govt. N. W. P., dated 26 July 1842.

67. An addition proposed by the same courts to be made to section 19 also appears to us to be unnecessary; no reason for it is stated by the court.

68. Mr. Harington objects to the vagueness of the words "or other cause," in sections 19 and 24. The fault may be corrected by substituting the words "incompetent in law" for the word "unable," in regard to the court, in the fifth line of section 19 and the 6th line of section 24*. With reference to the case stated by Mr. Harington, in the 14th paragraph of his letter, we have to observe that a suit finally decided against the plaintiff does not come under the terms of these sections. P. 14 and 31. * Revised Draft.

69. Mr. Harington observes, that it appears from our Report that the proviso at the end of section 21, in regard to suits for penal damages, is intended to be general, and that infancy, absency, &c. are not to be excepted from its operation, and he suggests that this had better be stated distinctly, as persons not having the opportunity of referring to the Report might entertain doubts on the point. P. 32.

70. By section 11 suits for penal damages are barred after one year. By section 21 such suits are expressly excepted from the general allowance of time on account of infancy and unsoundness of mind; and by section 22 from the allowance on account of absence. There does not appear, therefore, to be any room for doubt on the subject.

71. Section 16, to which the remarks of Mr. Harington in the 33d paragraph of his letter appear† to apply, has been omitted in the amended draft, partly for the reason stated by him. † The Section cited is 22.

72. Paragraphs 34 to 39 of Mr. Harington's letter relate to the expediency of a limitation of time for the execution of decrees. In our first Report we said that we were inclined to think such a limitation advisable, but that the considerations which led us to this opinion properly belonged to the subject of insolvency, and that in submitting our views on that subject we should state them fully. With reference to this, Mr. Harington observes that "any Act relating solely to insolvency must leave untouched decrees for possession of property, moveable or immoveable, which are in no ways connected with the solvency or otherwise of the parties against whom they are passed." To such cases may be applied what we said in the same Report, viz., that we have no information to lead us to believe that laches often occurs on the part of decreeholders when there are visible means by which to obtain satisfaction of the judgment. Mr. Harington indeed states a case in which execution of a decree for a piece of land had not been applied for until upwards of 50 years after the date of the decree. But although such cases may occur now and then under peculiar circumstances, we cannot believe it to be common for parties who have taken the trouble to sue for the recovery of property which is tangible, to forbear, when they have got a decree according to their wish, from taking the necessary steps to obtain possession.

73. We considered that the question was intimately connected with insolvency, on the assumption which we believe still to be well grounded, that commonly the cause of execution being delayed is that no means of satisfaction are to be found; and it is a point to be determined in settling the law regarding insolvents, how long a judgment debtor, being in that situation when the decree is passed against him, shall be liable to process for the satisfaction thereof in regard to any property which he may subsequently acquire.

74. Lastly, Mr. Harington suggests that the Act should take effect six months after the date of its promulgation in every district, instead of six months after the date on which the Act shall be passed as provided in the draft. This suggestion is according to a rule laid down by the Sudder Court, but it does not appear advisable to adopt it on this occasion. It seems to be proper that the Act should take effect universally from the same date, and the period of six months after the passing of the Act may be considered long enough to give due notice of it.

75. With reference to para. 43 of our Report on this subject, dated 24th December last, we recommend that sections 17 and 21 be altered respectively by the insertion of the words "or coverture" after the words "unsoundness of mind."

76. We think it advisable to extend section‡ 28 by adding to it the words "nor section 12, Regulation XXV. of 1802 of the Madras Code." ‡ Revised Draft.

No. 1.
Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

77. We submit a printed copy of the Draft Act originally proposed, with the alterations recommended in our Report, dated 1st October 1842, and in this Report, written on the face of it, the former in blue ink, the latter in black ink.

We submit this our Report for the consideration of your Honour in Council.

(signed) *C. H. Cameron,*
F. Millett,
D. Elliott,
H. Borradaile.

Indian Law Commission,
25 March 1843.

Enclosed in Report of the Law Commission, dated 25th March 1843.

Legis. Cons. 21 April 1843. No. 51.

[*Note.*—The amendments indicated in blue ink in the manuscript copy, and inserted in *italics* in the print, are those proposed in the Revised Draft submitted in the Report dated 1 October 1842. The additions and amendments in red ink in the manuscript copy, and inserted at the bottom of the text as notes, are those proposed in the present Report.]

An Act concerning the acquirement and extinction of rights by prescription, law, and equity, ~~in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's courts at Calcutta, Madras, and Bombay, and in the Straits settlements, and for the limitation of suits in the courts of the East India Company,~~ *and for the limitation of suits in the Courts of Law and Equity in the territories subject to the Government of the East India Company.*

Section I. It is hereby enacted, that subject to the exceptions hereinafter mentioned, a title by prescription, *both at law and equity*, shall be acquired in respect of property, moveable and immoveable, and hereditary offices, by uninterrupted possession, mediate or immediate, as proprietor, for six years in the case of moveable property, and for 12 years in the case of immoveable property and hereditary offices; provided that if any other title be proved, the possession shall have been adverse thereto; and provided that nothing herein contained shall be construed to affect any rights arising from possession of moveable property now recognised by law.

(1)

Section II (2). And it is hereby enacted, that in the case of any benefits, liberties, or privileges, derived out of or affecting any immoveable property which shall have been enjoyed without interruption for 12 years, a right to the enjoyment thereof against the owner of the property shall be acquired by prescription, subject to the exceptions hereinafter mentioned, unless such benefits, liberties, or privileges shall have been enjoyed by some consent or agreement expressly given or made for that purpose by some deed or writing.

Section III (3). And it is hereby enacted, that when a (4) right to any such benefits, liberties, or privileges, as aforesaid, whether acquired by prescription or otherwise, shall have been disused for 12 years, the right shall be extinguished.

Section IV (5). And it is hereby enacted, that when a party shall have been forcibly dispossessed of immoveable property, or shall have been prevented from enjoying some benefit, liberty, or privilege derived out of or affecting immoveable property, and shall have applied within the time limited by any law now in force, or within one month, to the proper authority, for assistance to recover the possession or the use thereof, and shall have recovered the same, the period during which his possession or enjoyment was interrupted in such manner shall not be considered an interruption within the meaning of this Act.

Section V (6). And it is hereby enacted, that when the possession upon which a title

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(1) Section II. And it is hereby enacted, that when proprietors of land shall have suffered the occupation and use thereof without interruption for a period of 12 years by a tenant claiming to be entitled to occupy and use the same as tenant in perpetuity, a title by prescription to the perpetual occupancy shall be acquired by the tenant, subject to the conditions incident to such a tenure, by any law, or usage having the force of law.

(2) Section III. (3) Section IV. (4) perpetual.
(5) Section V. (6) Section VI.

No. 1. Proposed Law as the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

a title by prescription is claimed shall have been acquired by the deprivation of another party who was previously in possession, or in opposition to a title which had accrued, but upon which possession had not been taken, or having been taken, had been previously interrupted, it shall be deemed adverse in respect of the party so deprived of possession, and of any one claiming in the same right, or in respect of the parties interested in the said title, as the case may be, from the time at which the possession actually commenced; and that when an adverse title shall have accrued after the possession was acquired, the possession shall be deemed adverse to the parties interested therein from the time at which such title accrued.

Section VII. Provided that in all cases where the possession upon which a title by prescription is claimed, has been acquired by means of a concealed fraud, it shall not be deemed adverse to any party whose title would be extinguished by the prescription until the time at which such fraud shall, or with reasonable diligence might have been first known by him or any party through whom he claims, unless such title by prescription be claimed by a bonâ fide purchaser for valuable consideration, or by some person through him.

Section VI ([7]). And it is hereby enacted, that possession acquired by a bonâ fide purchaser for valuable consideration from a trustee, or from a [([8]) depositary or mortgagee, shall be deemed adverse to the mortgager, or depositor, or beneficial owner under the trust] from the time of the acquisition by purchase.

Section VII ([9]). And it is hereby enacted, that a title by prescription shall be acquired by possession, by or through a depositary ([10]) or mortgagee, which shall have continued without interruption for 30 years in the case of moveable property, and 60 years in the case of immoveable property, unless in the meantime an acknowledgment of the title of the [([11]) mortgager or depositor,] or of his right of redemption, shall have been given to him or some person claiming his interest, in writing signed by the [([12]) mortgager or depositor,] or the person claiming through him, in which case prescription shall not take effect until possession shall have been had without interruption for 30 or 60 years, as the property may be moveable or immoveable, from the date of such acknowledgment.

~~Section VIII. And it is hereby enacted, that in the case of a concealed fraud by which a party shall have been deprived of any property, the possession thereof shall not be deemed adverse to the party entitled until the time at which such fraud shall, or with reasonable diligence might have been first known by him, except when it shall have been acquired by a bona fide purchaser for a valuable consideration, or when a party shall have succeeded to it by inheritance or devise; in the former case, adverse possession shall be deemed to have commenced from the time that the party entitled was deprived of the property by means of such fraud; in the latter, from the time of the succession, provided it shall not appear that the party to whom the possession devolved assisted in the commission of the fraud, or at the time he entered into possession, knew or had reason to believe that the fraud had been committed.~~

Section IX ([13]). And it is hereby enacted, that when a party having a right to any estate or interest in reversion or remainder shall have become entitled to the same in possession, by reason of any forfeiture or breach of condition, but shall have waived his action to recover thereupon, possession shall not be deemed adverse to him or any party claiming in the same right until the determination of the previous right ([14]).

Section XI. And it is hereby enacted, that no plaintiff in any suit for property or rights to which the above rules are applicable, shall be barred by any length of time, except when a title shall have been acquired by some other person by prescription, or when the right claimed by the plaintiff shall have been extinguished by prescription, any law or regulation to the contrary notwithstanding.

Limitation of Suits.

Section X ([15]). And it is hereby enacted, that suits other than for property and rights to which the above rules are applicable, shall not be admitted in ~~the courts of judicature of the East India Company,~~ *any court of judicature of the East India Company,*

([7]) Section VIII.

([8]) a depositary, pawnee, or mortgagee, shall be deemed adverse to the beneficial owner under the trust, depositor, pawner, or mortgager.

([9]) Section IX. ([10]) pawner.

([11]) depositor, pawner, or mortgager. ([12]) depositor, pawner, or mortgager.

([13]) Section X. ([14]) otherwise than by such forfeiture. ([15]) Section XII.

No. 1. Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

Company, except as hereinafter provided, unless they are instituted respectively within ~~the periods specified in the following section~~ *the following periods; any law or regulation to the contrary notwithstanding; (that is to say)*,

~~Section XI~~. First. Within one year from the time the cause of action arose.

Suits for penal damages or pecuniary penalties, or forfeitures for the breach of any law or regulation.

Suits for damages for injury to the person and personal property, or to the reputation.

Suits for debt on account of wages of servants, artizans, and labourers; for hire of animals and vehicles; for retail supplies of victuals and articles of daily consumption; for tavern bills, and bills for board and lodging, and for lodging only; for the rent of buildings, and on any other account, subject by established custom to settlement by the month, or a shorter period.

Suits to alter or set aside summary decisions or orders of the ordinary courts of judicature *of the East India Company.*

Suits to alter or set aside summary awards by collectors and other officers of revenue, in disputes regarding arrears and exactions of rent.

Suits founded on the right of pre-emption in cases to be governed by a law or usage which recognises such right.

Second. Within six years from the time the cause of action arose.

All suits ~~for debt and damage upon contracts, or for wrongs, other than are described in clause 1st of this section, and for the enforcement of contracts~~ *for which no other limitation is herein provided.*

Third. Within twelve years from the time the cause of action arose.

Suits *upon all debts or obligations of record and upon specialities, and such written securities for the payment of money as are attested by a witness, and* for the recovery of legacies.

Section XII ([16]). Provided that suits against trustees shall not be barred by any length of time([17]).

Section XIII ([18]). And provided that where by *any* law a shorter period *than one year* is specially prescribed for the institution of a particular suit, the limitation so prescribed shall still be observed, notwithstanding this Act.

Section XIV ([19]). 1st. And it is hereby enacted, with respect to suits for the recovery of legacies, and for debts, that if an acknowledgment shall have been made by the party liable within the period of limitation applicable to the case, either by writing, signed by them, or by part payment or part satisfaction on account of principal or interest due thereon, then a new period of limitation should be reckoned, according to the nature of the case, from the date of such acknowledgment or payment or satisfaction.

2d. Provided that if there be two or more parties liable, no one of them shall be chargeable by reason only of a written acknowledgment made or signed by any other.

Section XV ([20]). And it is hereby enacted, that in suits for balances upon accounts current between merchants and traders who have had mutual dealings, the period of limitation shall be computed from the close of the year, in the accounts of which there is the last entry indicating the continuance of mutual dealings, reckoning the year as it is reckoned in the accounts.

Section XVI ([21]). And it is hereby enacted, that in suits for damages for wrong done by a concealed fraud, the cause of action shall be deemed to have first arisen at the time of which such fraud shall or with reasonable diligence might have been first known by the party wronged.

Section XVII ([22]). And it is hereby enacted, that in computing the periods of

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([16]) Section XIII.

([17]) during their lives, but that suits for the recovery of damages out of the assets of trustees after their decease shall not be admitted, unless they are instituted within the proper period of limitation, according to the last section reckoned from the decease of the trustee.

([18]) Section XIV. ([19]) Section XV. ([20]) Section XVI.

([21]) Section XVII. ([22]) Section XVIII.

of prescription specified in sections I. and II. the time shall be excluded, during which some party entitled to interrupt the possession or enjoyment shall have been under the disability of infancy or unsoundness of mind, ([23]) or shall have been absent out of the territories of the East India Company, and the contiguous territories, and the Island of Ceylon, provided that no longer time than 18 years shall be excluded on account of any such disability, *provided that* ~~and~~ no longer time than five years *shall be excluded* on account of such absence, and ~~provided~~ that the absence shall have been continuous from the time the title accrued.

Section XVIII ([24]). And it is hereby enacted, that in computing the period of prescription specified in section I., in the case of moveable property, the time shall be excluded during which the party in possession shall have been absent out of the territories of the East India Company.

Section XIX ([25]). And it is hereby enacted, that in computing the periods of prescription specified in sections I. and II. the time shall be excluded during which any suit brought bonâ fide to interrupt the possession shall have been pending, and shall have been diligently prosecuted in any court of judicature, which from defect of jurisdiction or other cause shall have been ([26]) ~~unable~~ to decide upon it, or shall have passed a decision which shall have been annulled on appeal for any such cause.

Section XX ([27]). And it is hereby enacted, that the provision of section III. shall not have effect when the party entitled to use the benefits, liberties, or privileges therein referred to, shall have been under any of the disabilities specified in section XVII., except as subject to the provisions contained in that section.

Section XXI ([28]). And it is hereby enacted, that in *computing the periods of limitation specified in* section XI. the time shall be excluded during which the claimant, or any person through whom he claims, shall have been under the disability of infancy or unsoundness of mind ([29]), provided in respect of the suits described in ~~clauses~~ *articles* 2 and 3 of the said section, that no longer time than 18 years shall be so excluded. And in respect of the suits specified in ~~clause~~ *article* 1 of the same section, excepting suits for penal damages, that no longer time than five years shall be so excluded: provided further, that suits for penal damages shall never be admitted after the expiration of one year.

Section XXIII. Provided that for the purposes of this Act the term of infancy shall be taken in all cases to extend from birth to the end of 18 *years.*

Section XXII ([30]). And it is hereby enacted, that in all suits described in section XI., except suits for penal damages, when the claimant or the person through whom he claims shall have been absent out of the territories of the East India Company, and the contiguous territories, and the Island of Ceylon, at the time the cause of action arose, and shall have continued so absent, the time of such continued absence shall be excluded in computing the prescribed period of limitation, provided that no longer time than five years shall be so excluded.

Section XXIII ([31]). And it is hereby enacted, that in all suits described in section XI. the time during which the defendant shall have been absent out of the territories of the East India Company shall be excluded in computing the prescribed period of limitation.

Section XXIV ([32]). And it is hereby enacted, that in computing the period of limitation applicable to any case, the time shall be excluded during which the claimant or the person through whom he claims shall have been engaged in prosecuting a suit upon the same cause of action against the same party, or some party whom he represents, bonâ fide, and with due diligence, in any court of judicature, which from defect of jurisdiction or other cause shall have been ([33]) [~~unable~~] to decide upon it, or shall have passed a decision which on appeal shall have been annulled for any such cause.

Section XXV ([34]). And it is hereby enacted, that when by the provisions of this

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([23]) or coverture. ([24]) Section XIX. ([25]) Section XX.
([26]) incompetent in law. ([27]) Section XXI. ([28]) Section XXII.
([29]) or coverture. ([30]) Section XXIV. ([31]) Section XXV.
Section XXVI. ([33])incompetent in law. ([34]) Section XXVII.

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this Act a person is barred from bringing a suit for the recovery of any legacy, debt, or damages, his right to the legacy, debt, or damages for which a suit might have been brought by him, but for those provisions, shall be extinguished unless such right is secured by some mortgage, pledge, or lien.

~~Section XXVI.—And it is hereby enacted, that no complaint or information shall be proceeded upon by any magistrate or justice of the peace, against any person for any offence punishable by fine only, or by any officer of revenue against any person liable to any penalty or forfeiture, unless such complaint or information shall have been received within one year from the commission of the act charged, or within any shorter period that may be prescribed by any existing law for preferring such complaint or information.~~

Section XXVIII. Provided that nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of any court in refusing equitable relief on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act.

Section XXVII ([35]). And it is hereby provided, that this Act shall not be construed to affect the provisions of section 10, Regulation XIX. 1793, extended to Cuttack by section 24, Regulation XII. 1805; section 10, Regulation XLI. 1795; and section 6, Regulation XXXI. 1803, extended to the territories ceded by Dowlut Rao Scindiah and the Peishwah by section 21, Regulation VIII. 1805, of the Bengal Code ([36]).

Section XXVIII ([37]). And it is hereby provided, that this Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue, or for any public claim whatever.

Section XXIX ([38]). And it is hereby enacted, that all suits that may be now pending, or that may be instituted within the period of six months from the date of the passing of this Act, shall be tried and determined as if this Act had not been passed.

~~Section XXX.—And it is hereby enacted, that the provisions of this Act concerning the acquisition and extinction of rights shall not be of force in respect of any property situated, or being within the local jurisdiction of Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay, and of the Recorder's Court in the Straits of Malacca, and that the rules of limitation contained in this Act shall not be applied to any suits or actions in those Courts.~~

Indian Law Commission, 26 February 1843. (signed) *J. C. C. Sutherland*, Secretary.

(No. 7.)

Legis. Cons. 21 April 1843. No. 52.

From *J. C. C. Sutherland*, Esq., Secretary Indian Law Commission, to *F. J. Halliday*, Esq., Secretary to the Government of India, Legislative Department; dated 25th March 1843.

Sir,

From Secy. with the Gov. General, with four enclosures of 22 Sept. 1842. From junior Secy. with Gov. General, with one enclosure, dated 26 Nov. 1842.

I AM directed by the Indian Law Commissioners to transmit to you the accompanying original papers as noted in the margin, which were forwarded with your letters of 28th October and 13th December last.

I have, &c.

(signed) *J. C. C. Sutherland*,
Secretary Indian Law Commission.

([35]) Section XXIX.
([36]) nor section 12, Regulation XXV. 1802, of the Madras Code.
([37]) Section XXX. ([38]) Section XXXI.

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(No. 149.)

From *J. F. Thomas*, Esq. Acting Chief Secretary to Government, Fort St. George, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India; dated Fort St. George, 28th March 1843.

Legis. Cons. 21 April 1843. No. 53.
Judicial Dept. Dated 1 Mar. 1843. No. 20.

Sir,

Para. 1. I AM directed by the most Honourable the Governor in Council to acknowledge the receipt of your letter of the 21st March 1842, with its enclosures, and in reply, to transmit for the purpose of being laid before the Honourable the President in Council, the accompanying extract from the proceedings of the Sudder Adawlut, communicating "their sentiments, and those of certain subordinate officers, on the provisions of the Draft Act, on the acquirement and extinction of rights by prescription."

2. The Judges of the Sudder Adawlut consider the Act unsuited to the country, and to the condition of the people; but his Lordship in Council is disposed to approve the draft generally, as containing many highly salutary and important provisions. He observes, that there are several points discussed in the letters from Mr. George Bird, Mr. Morris, and Mr. Strange, which are deserving the consideration of the Law Commission.

3. His Lordship in Council concurs in the objections of the Sudder Adawlut, as far as to think that the phraseology of a part of the Act might be simplified with advantage. He is also of opinion that it may be necessary to exclude from its operation the ancient and Hill Zemindaries managed under the provisions of Act XXIV. of 1839, by the agents to the most Honourable the Governor, in the districts of Ganjam and Vizagapatam, as well as the territories of Khurnool and Bunganapilly, which it has been proposed to place under similar control. A slight modification of the provisions of section 27 will effect the object in view.

I have, &c.
(signed) *J. F. Thomas*, Assisting Chief Secretary.

(No. 20.)

EXTRACT from the Proceedings of the Suddur Adawlut, under date the 1st March 1843.

Legis. Cons. 21 April 1843. No. 54.

READ order of Government, dated 27 May 1842, communicating, for the opinion of the Judges of the Suddur Adawlut, and of any other officers they may deem it expedient to consult, a Draft Act, "on the acquirement and extinction of rights by prescription;" together with copy of a letter to the chief secretary to the Government of Fort St. George from the junior secretary to the Government of India, of the previous 21st March.

1. The Judges of the Court of Suddur Udalut have given their best consideration to the Act placed before them, and are of opinion that it is unsuitable as respects our knowledge of the country, and not less so as respects the condition of the people.

2. The Judges have called upon certain of their subordinates for their opinion on the Act, and submit copies of the correspondence received from them; they concur generally in the objections which are noticed, and desire to record their opinion that the Act could not be brought into operation without increasing litigation unduly, and without unsettling property, and leading to the very evils which it is intended to avert.

From Mr. Morehead, Zillah Judge of Chingleput, dated 17 June 1842.
From Mr. Harrington, First Judge of the Provincial Court, S. D., dated 17 June 1842.
From Mr. Bird, Second Judge of the Provincial Court, W. D., dated 30 June 1842.
From Mr. Babington, Third Judge of the Provincial Court, C. D., dated 16 October 1842.
From Mr. Strange, Acting Judge of Malabar, dated 22 October 1842.
From Mr. Morris, Third Judge of the Provincial Court, W. D., dated 28 October 1842.

3. The Judges regard the regulations, usually termed the Statute of Limitations, as simple in their character and intelligble to the mass of the people; above all, they have long been in operation: the principle on which they are founded is well understood, and they are of opinion that no benefit would arise from a measure calculated in any way to disturb their relations.

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4. The Judges desire to observe on the phraseology of part of the proposed Act, and to state their opinion, that it is not adapted for the purposes of the inhabitants of India, where the simplest ideas of legislation are with difficulty implanted in their minds. They apprehend also, that certain parts of it could not be readily translated into the languages of the country; and if this were possible, they doubt if the translations would convey any meaning to the mass of the people.

5. Of the different public officers called upon by the Court of Suddur Adawlut, one of them, Mr. W. H. Babington, third Judge of the Provincial Court, Centre Division, has declared himself unable to pass an opinion on the Act, from his inability to understand it. Mr. Babington is regarded as one of the ablest and best informed gentlemen of the civil service.

6. Mr. Babington has not specified the particular parts of the Act which have failed to convey to his mind a meaning; but the Judges would respectfully suggest that there are parts of it open to exception, on the grounds of a meaning not being clearly conveyed; and they apprehend that the whole Act, when taken together, assumes a legal and technical knowledge not possessed by the law functionaries of the Mofussil, which renders its application incompatible with existing circumstances.

Ordered, That extract from these proceedings, together with copies of the correspondence referred to in paragraph 2, be forwarded to the Secretary to Government for the purpose of being laid before the most Honourable the Governor in Council.

(True Extract.)

(signed) *H. D. Phillips*, Acting Register.

To the Secretary to Government in the Judicial Department, from *W. Morehead*, Esq., Judge, Zillah Court, Chingleput, to the Register to the Court of Suddur Adawlut; dated 17 June 1842.

Sir,

In reference to the orders of the Suddur Adawlut, forwarded to me by you on the 1st instant, with certain papers relative to a proposed Act, "on the acquirement and extinction of rights by prescription, and for the limitation of suits," I have the honour to state, that so far as I am able to form an opinion on the subject, the Act seems satisfactorily to meet all the points intended without, in any one instance, doing violence to the usages of the inhabitants of this country; at the same time that its operation cannot but prove a most effectual check to much vexatious litigation at present prevalent in most courts, from the period of limitation extending to 12 years, particularly in the class of cases specified under clause 1, section 11 of the proposed Act.

I have, &c.

(signed) *W. Morehead*, Judge.

From *W. Harrington*, Esq. First Judge, Trichinopoly, to the Register to the Court of Suddur Adawlut, Fort St. George; dated 17 June 1842.

Sir,

I have the honour to acknowledge the receipt of your communication, under date the 1st instant, submitting for my opinion a proposed Act by the Law Commissioners, "on the acquirement and extinction of rights by prescription," and "for the limitation of suits" in the Adawlut courts.

2. That some such Act as that proposed has long been a desideratum, with a view to remedying abuses arising particularly out of the disturbance in possession of parties holding real property for lengthened periods, and during such enjoyment commonly at very considerable expense effecting improvements, materially enhancing the value of such property, and out of the protracted uncertainty of the tenure on which other property is held, as well as out of the present lengthened liability to harassing process in other cases, must have struck every one of any experience in judicial matters; and after the best consideration I have been able to give to the details of the Act before me, I am unable to discover anything not well calculated to meet the ends in view, or to offer any suggestions which I should have

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have the vanity to suppose an improvement on them: were I to venture one, it should be, whether the period of limitation proposed for suits for the recovery of legacies is sufficiently long, or whether that allowed by the English statute 3 & 4 Will. 4, c. 27, section 40, would not be preferable.

(signed) *W. Harrington*, First Judge.

From *George Bird*, Esq. Second Judge, Tellicherry, to the Register to the Court of Suddur Adawlut, Fort St. George; dated 30 June 1842.

Sir,

In conformity with the instructions annexed to the order of Government, dated 27th ultimo, in which the Court of Suddur Adawlut were pleased to direct that I should submit my opinion on the proposed Act, relative to the "limitation of suits" and the "acquirement and extinction of rights by prescription," I have the honour to forward the few observations that have occurred to me, during a perusal of the Draft Act, and which I consider to be on the whole calculated to benefit the community in India; and by reducing, as it will do, the period within which suits must be instituted, will tend gradually to check litigation, and put a stop to many of the fraudulent and unfounded claims which are at present so prevalent in the courts under the Presidency of Fort St. George.

The nine first sections of the Draft Act appear to relate to the right of obtaining property in virtue of a title by prescription; and although, as stated in the explanatory report of the Law Commissioners, the negative prescription created by the rules of limitation now in force, may leave the property "in an anomalous and undetermined state," yet "it secures the occupants in their possession," and by so doing virtually creates a title; and it appears to me that the greater portion of the inhabitants will not appreciate or understand the rights now proposed to be conferred upon them. Indeed a respectable individual, with whom I was conversing, observed that so long as he was secured by the law of limitation, he did not understand what better right could be conferred upon him.

I have proposed a few alterations, with respect to the periods laid down for bringing certain descriptions of claims; but generally, as regards the limitation law, I entirely concur.

Section I. Instead of the words "hereinafter mentioned," I would suggest a specification of the exceptionary sections, and which would prevent any misconstruction of the intention.

Sections II. and III. These sections are sufficiently clear when applied to immoveable property in general; but there is, I believe, a species of immoveable property in many of the districts subordinate to the Presidency of Fort St. George, and respecting which a doubt might be entertained as to how these provisions should apply. The property to which I allude consists in lands, the proprietors of which are not forthcoming, and which to prevent loss to the revenue are assumed by the local authorities, and are given to any one who will agree to pay the annual sum demanded as revenue. These lands are often held for a series of years by one and the same individual, and up to the present time have been relinguished on any one making good a title to them, without reference to any length of period, sometimes without opposition, sometimes by an action against the occupant or the Government. Those of which I have the most knowledge are in Canara, and are termed "Sirkar-gherry lands," and are of three kinds, viz.: 1. Estates originally cultivated by Government. 2. Estates taken possession of by Government on the death of the owner, no hire coming forward at the time. 3. Estates abandoned by the proprietors. They are given, I believe, without agreement of any kind, except an annual Puttah, and by the revenue authority of the district, who may be said to have virtually no right to bestow them. On the proposed Act coming into operation, a question may be raised regarding the two latter kinds of land, as to the lawful owner, possession not having been held "*by virtue of a proprietary right*," either by the occupant or the Government.

Section IV. In the Madras Code, there is not I believe any law in force limiting the time in such cases (if there is, it should be specified in the section); but I think one month is insufficient, and should be extended to three.

Section VII. This is an important section, and with regard to the habits of the

No. 1. Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

people of India, is not I consider fixed at too large a period. To make it, however, fully efficient, the registry of the original mortgage deed, or any intermediate written "acknowledgment of the title" should be incumbent.

Section XI. Suits for penal damages, and suits for damages for injury to the persons, personal property, or reputation, should be limited to six months at most from the time the cause of action arose. After a longer period, such claims must be considered suspicious, and would be brought more to harass and annoy.

Suits to alter or set aside "summary decisions and orders of the ordinary courts of judicature" should certainly not be allowed so long a period as one year. Three months would be ample. If to the extent of one year is permitted, an individual by first appealing to the different constituted courts, and subsequently by bringing a suit, might protract the execution of an order to a very indefinite period, and there would be a serious impediment to all business in the Courts.

In this section I regret to observe no provision has been made with regard to the execution of decrees, the Law Commissioner having reserved the subject for future consideration. In the courts subordinate to this Presidency a great evil exists with regard to decrees alleged to have remained unexecuted, it having been ruled that no period, however remote, shall prevent the execution of a regularly passed decree, the whole onus being placed upon the defendant or his heir; and unless satisfaction of the decree can be shown, the decree is executed, and it is a very common occurrence for decrees which have remained dormant for 15 or 20 years, or even longer, being executed. There appears to be no possible cause why a limitation law should not apply to decrees of court; and I should be glad to see the Legislature declare all decrees that had not been in the course of execution, or for which execution had not been applied within six years, irrecoverable, unless it could be proved that the party amenable had been beyond the reach of process.

Amongst claims limited to six years, are classed those for the recovery of money secured by mortgage of property, where possession has not been obtained; but I consider this has been fixed at too short a period, and I would, with reference to the peculiar habits of the people, extend the limit to eight or ten years. Money is seldom advanced, except upon security of property of some kind, the recovery of which has hitherto, by the provisions of clause 4, section 18, Regulation II. of 1802, of the Madras Code, not been effected by the law of limitation, and I have no doubt that instances might be adduced, where such debts have been recovered after a much longer period than 12 years. The alteration therefore from an unlimited period to one fixed at six years would be too sudden, and would either be the cause of much loss and inconvenience, or lead to an increase of fraud and forgery.

Section XIV. Clause 2. A whole undivided family may be liable; but the head of the family, who transacts the business, would only give "the acknowledgment." Such an exception should be specified in this section.

Section XXIII. The provisions of this section are liable to abuse; and with reference to the explanatory report of the Law Commissioners, I would submit that in the event of the absentee having "a local representative," it should be incumbent on a party to proceed within the prescribed periods for the recovery of rights against the said local representative. In the event of judgment being given in favour of the claim, possession as respects immoveable property might be immediately obtained; and if the agent be declared not liable for debts or damages incurred by his master, the decree might remain unexecuted until the return of the absent party.

Section XXVI. I would limit the period to three or six months, in lieu of one year. I am not aware of any law in the Madras Code prescribing a shorter period; if such exists, it should be specified.

In conclusion, I would observe, with reference to Section 29, that as this Act is intended to have a retrospective effect, which few legislative enactments hitherto have had, a period of one year, at least, should be fixed, from the date of the passing of the Act, and which would enable the community to adopt measures to meet its obligations, and, at the same time, the local authorities should be specially directed to promulgate its provisions; for my experience convinces me that we are far too remiss in giving publicity to regulations which it is expected the community will observe, and which, if they do not observe, are enforced against them.

I have, &c.

(signed) *Geo. Bird*, Second Judge.

No. 1.
Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

From *H. Babington*, Esq. Third Judge, Gooty, to the Register to the Court of Suddur Adawlut, Fort St. George; dated 16th October 1842.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 10th October 1842, calling my attention to the order of Government, dated the 27th May 1842, communicated to me under date the 1st June last, and requesting me to submit my opinion on the provisions of the proposed Act "on the acquirement and extinction of rights by prescription," and "for the limitation of the suits" in the Adawlut Courts, without further delay.

2. I beg to state, in reply, that I am unable to give an opinion on the provisions of the proposed Act, owing to my inability to understand a considerable part of them.

I have, &c.
(signed) *H. Babington*, Third Judge.

From *T. S. Strange*, Esq. Acting Judge, Calicut, to the Register to the Court of Suddur Adawlut, Fort St. George; dated the 22d October 1842.

Sir,

I HAVE the honour to submit my opinion on the provisions of the proposed Act on the acquirement and extinction of rights by prescription, and for the limitation of suits, and to express my regret for my delay in so doing, which has been owing to my having been engaged in very extended inquiries here and at Tellicherry, regarding some of the public servants, and to which I was obliged to devote all the time that could be spared from current business, as my charge of the courts at these two stations was in each instance for a very limited time, within which it was desirable that I should bring my investigations to a close.

I have, &c.
(signed) *T. S. Strange*, Acting Register.

1. It appears to me that the creation of titles by positive prescriptions is objectionable; first, as not necessary to remedy any existing evil; and, secondly, as liable to promote litigation and false claims.

2. By the limitation of suits, requiring that they be instituted within a specified period, protection is afforded to the interests of possessions of property against fraudulent or malicious attempts to disturb them; and sufficient inducement is given to those who are out of possession, and have claims, to bring them forward, while the means of ascertaining the truth may be expected to be readily attainable.

3. Thus there are very favourable reasons for a law of limitation; but what the creation of prescriptive titles is to effect beyond what the law of limitation secures is not easily discernible.

4. I think, however, that the prospect of obtaining such titles may tempt many to misrepresentation of the nature of their tenures.

5. There is much land held in this province, particularly from rajahs and pagodas, upon assumptions, owing to the abandonment of property during the wars of Tippoo, and upon grants or mortgages of from 50 to 100 or 200 years' standing, the proprietors' dues on which are merely nominal (a few cocoa nuts and leaves for thatching, or a few fanams), the delivery of which is often unenforced, and when enforced, not easily proved.

6. It is true that on failing to prove admission of his title within the term of limitation of suit now in force, the proprietor may be barred in his action; but the consciousness in the holder of the land of the want of any adverse title tends to lead him to an accommodation, or new arrangement with the proprietor, without the interference of the Court being called for. But when the fact of mere possession, without virtual or formal recognition of right in another, during a course of years, may suffice of itself to constitute a new title in the occupant, he will be at once inclined to assert this title, and to reject all overtures from the proprietor, being relieved of the necessity of showing how he got possession of the land, and having only this answer to give: "I have held undisturbed possession for 12 years; and now, by the law of the land, I am proprietor; your proprietary right has

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has ceased." Those, also, who resist suits falsely, on the plea of non-payment of proceeds for a particular term of years, so as to render the suits untenable under the law of limitation, will have fresh inducement to meet the plaint on this footing.

7. There is, moreover, a class of mortgages very prevalent here, where the proprietor is entitled to no proceeds at all, and on which long occupations of land exist. If any proprietors whose lands are thus situated should fail to obtain a written recognition of their titles, or else to lodge a suit in vindication thereof, within the short period of six months from the passing of the Act (*vide* Section XXIX.), their rights would be irrecoverably forfeited. The occupant would plead his undisturbed possession in full enjoyment, free of payments to another, and the proprietor would be left without an answer.

8. Thus litigation and false claims (already engendered to a fearful extent under the operation of our laws) will, I feel assured, be on the increase, if that part of the proposed Act to which I now advert be adopted by the Legislature.

9. It may be explained that the Act provides, that the possession which is to constitute the prescriptive title is to be possession "as proprietors." If this necessitates the production, on the part of the occupant, of his title-deeds, and of proof that he has dealt with the land in granting leases or mortgages "as proprietor," the evils I have adverted to need not be anticipated; but if this possession "as proprietor" consists merely in occupancy without payment of proceeds, or acknowledgment in any other way of a title in another, then the evils spoken of may reasonably be expected to arise.

10. The rules contemplated for the limitation of suits appear to me desirable, save that their application to questions of rights on land will, I think, (for reasons already stated) be fraught with danger to the interests of proprietors. It seems to me that it would be safe, and but just, to leave all claims of this kind to be determined according to their merits, without restriction of time for bringing the suit, as they are based upon old and reverenced rules, universally known and acknowledged in the district where they prevail, and are often connected with local customs, conveniences and past events, to which no general law can be made fitly applicable.

11. As regards claims unconnected with land, the periods fixed upon within which they are to be prosecuted seems to be judiciously apportioned according to the nature of the demand to be made; the more closely the limits are drawn in such cases (consistently with due consideration for the interests and opportunities of the claimants), the more will false litigation be checked.

12. I have only one objection to offer to this part of the Act, which respects the confirmation of summary decisions or orders of court, if no suit to set them aside be brought within the term of one year.

13. It appears to me that under no consideration ought such decisions to have the weight of a deliberate judgment. They are liable to be made hastily and upon insufficient evidence, without due opportunities of proof or defence being granted, and are really good only for what they pretend to provide for the immediate occasion, and in default of means for a fuller settlement of the matter at issue. The successful party is the gainer for the time; why should he, for this cause, be made gainer in perpetuity, if his opponent fail to bring the question into court by a regular suit within the term specified, which, for want of funds, or various other reasons, he may be unable to do?

14. There appears to be an inconsistency between the draft of the Act and one part of the printed letter which accompanied it. It would seem by the concluding part of section 25 of the former, that debts secured by means of mortgages and pledges are excepted from the limitation of six years, within which a suit for recovery must be brought for debts in general, being intended probably to be allowed to be actionable for a term of 30 years if moveables be pledged, or of 60, if real property be mortgaged, under the operation of section 7 of the Act; but the two first lines in page 11 of the letter would show that it was contemplated to apply the limitation of six years to debts of this description also.

(signed) *T. S. Strange,*
Acting Judge.

No. 1.
Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

From *H. Morris*, Esq. Third Judge, Tellicherry, to the Register to the Court of Sudder Adawlut, Fort St. George; dated the 28th October 1842.

Sir,

1. I HAVE the honour to acknowledge the receipt of your letter of the 10th inst., calling my attention, by desire of the Judges of the Sudder Adawlut, to the order of Government, dated the 27th May 1842, communicated to me under date the 1st June last, and, in obedience to their instructions, to offer the few following remarks on the provisions of the proposed Act "on the acquirement and extinction of rights by prescription," and "for the limitation of suits" in the Adawlut Courts.

2. After an attentive consideration of the provisions of the proposed Act, I cannot but regard it as an enactment which on the whole must prove of great utility, although at the same time I would most respectfully suggest that an over-careful spirit strikes me to pervade it, and that antiquated claims have been over regarded at the hazard of increased litigation and insecurity to long possessed rights.

3. I would further take the liberty of stating, that as far as my limited experience goes, I concur with a writer on this subject, in his dread of antiquated claims, and think with him that the general entertaining of them is inconsistent with the security of property, as the older the claim is the greater must be the difficulty of refuting it.

4. To use his forcible language, "It should be remembered how easy and how frequent the successful advancement of old and utterly false claims against existing possessions already is; how utterly irrefutable such are when they refer to periods so remote that the alleged circumstances and the evidence are beyond the reach of scrutiny and refutary evidence; and how much and grievously the people are already harassed and demoralized by the multiplied calls for evidence, which it is to be feared the Act must necessarily increase."

5. I am, however, of opinion that positive prescription, which is not now recognized by the Madras Code, is much needed, and the extension of negative prescription provided by this Act is likewise a marked improvement on the existing law, the preclusion of the institution of suits which has been hitherto only recognized, although securing the occupants in their possession, yet leaving the property, as stated by the Law Commissioners, in an anomalous and undetermined state, for "the law takes away the remedy of the party whose right it still admits, and protects the interest of the party in possession, while it refuses to acknowledge any right in him."

6. Section 1. I submit whether "the law" alluded to in this section as recognizing a right arising from possession in respect to moveable property until an adverse title shall be proved, and sometimes against an adverse title, as also that mentioned in section 4, "by any law now in force," should not be embodied in this Act, so as to obviate all doubts in the mind of a Judge as to the particular law which might apply to any case brought before him.

7. Section 2. I consider that a registered deed should in all possible cases be required for the "consent or agreement" by which the prescriptive right is to be barred, as I hold that the law of registration should be most widely extended and intimately blended with the provisions of this Act; for it is chiefly through the means of such salutary cheeks that falsified or forged vouchers can be prevented, as the successful fabrication of a deed promising to restore the right will be otherwise very easy and very irrefutable.

8. Section 6. Here again, as elsewhere suggested, I would require that the *bonâ fide* purchases should bear the test of registration; as this will tend to check concealed collusion against the mortgager, &c.," and will at least prevent antedating of the purchase. Even with such aid, I agree that it will be very difficult to prove or disprove the genuineness of a purchase.

9. Section 7. This section strikes me as one of much importance. The exception I consider will lead to much litigation, so easy will it be to get up, and so difficult to refute, evidence of the "acknowledgment of the title of the mortgager, or depositor, or of his right of redemption." I think that the lien of the mortgager should, to be valid, be one attested by a registrar or other public authority, for I repeat that the law of registration should in all possible cases be made to bear closely upon the law of mortgage. I likewise readily concur with the aforementioned writer in his valuable suggestion "that certain officers," such as moonsiffs, and I would add tahsildars and other respectable and responsible

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functionaries, should have general powers "of attestation given to them, which would thus secure a great deal of improved evidence, though the above authorities should not be called upon to attend as witnesses, and much litigation, examining and travelling of witnesses, all great evils, might thus be averted."

10. I think also that the periods of 30 and 60 years should be reduced, for it is shown that by the English statute a mortgage is barred after 20 years from the time the mortgagee took possession, when there has been no intermediate acknowledgment in writing of the mortgager's title; and with much reluctance I would venture to differ from the Law Commissioners, in regarding that "the habits of the people in this country in respect to mortgages would be too violently interfered with by the time for redeeming them being contracted to shorter periods than the above."

11. According to the negative prescription created by rules of limitation at present in force, no court can take cognizance of any suit when the cause of action shall have arisen 12 years before, with exceptions, amongst which "all claims on mortgages" are included, "the period for rendering which absolute and unactionable is to be determined by the custom of the country." I have consulted many intelligent natives relative to the local usages in this respect, and would most respectfully submit whether cases of moveable property hypothecated and made over to the mortgagee might not come under the above rule or limitation, or be confined to 15 years, which would afford ample time in my humble judgment to the mortgager for the redemption of his property, or all right in failure thereof be justly forfeited.

12. Again, in respect to cases of immoveable property, where the advances on mortgage were made on condition of the transfer of the property into the possession of the mortgagees, and combined with their enjoyment of the usufruct, which would render any sudden dispossession a serious detriment to them, I consider a period of 30 years more than sufficient to insure their rights and those of the mortgagers, who having so long neglected to redeem their property, and omitted to obtain an express acknowledgment of their right from the parties in possession within that period, may be considered, without any semblance of injustice, in my opinion, to have virtually abandoned it.

13. It has been well remarked, that in the cases referred to, the probability of the mortgagers "being much aggrieved by the denial of claims so long neglected, is less than the probability of a wrong decision on such long gone-by circumstances, and the wrong decision is much the greater evil of the two, for every wrong decision against a possessor, besides affecting the general feeling of security in property, is the seed of much undue litigation; whereas the evil of a rejected, because antiquated claim, generally ends with itself, and tends to correct imprudence, and so diminish the litigation which results from imprudence."

14. Sect. 8. I beg to suggest "whether youth and inevitable ignorance should not be made conditions to the admission of the claim; and whether positive or criminal, that is, penal fraud, should not be made the other condition. This might diminish the wide scope to litigation which this section gives."

15. Sect. 11. I regard the period specified in the first clause of this section respecting "suits to alter or set aside summary decisions of the ordinary courts of judicature" as too extensive, for according to the practice hitherto observed in all courts, I apprehend that the parties advancing claims on property attached in satisfaction of decrees, are generally allowed but one, and never more than three months, for the institution of a suit. On this coast particularly, where all lands are more or less mortgaged, great room is afforded for the preference of false claims, and so numberless are the fictitious rights asserted on the attachment of any property, that till lately the officers presiding over the several courts might with truth have affirmed that their labour in any particular suit only commenced when they were called upon to enforce the decree." It is not, therefore, that the suspense of the party in whose favour the court's summary award has been given may be easily terminated," but that justice may be speedily done to the judgment creditor, that I think it so desirable some rule should be prescribed to bring such cases to a final settlement without delay, for the sale of property belonging to a debtor being almost invariably stayed until the claimant's right thereto has been set at rest, the unfortunate creditor is thus frequently kept out of his money for years, which is the covert object of the defendant, the nominal claimant being often a dependant or mere tool in his hands to impede the court in the collection of the decree's amount.

16. Under

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16. Under the admirable system enjoined to be observed by all courts, in the extract from the proceedings of the Suddur Adawlut of the 23d August 1841, I have reason to believe that the debtor is now in a great degree deprived of the opportunity of colluding with third parties so as to defraud the judgment creditor, and frustrate justice by advancing unfounded claims to the property attached. With the view, however, of opposing a more effectual bar to such fraudulent practices, I would particularly urge that the period limited for the institution of those suits should not exceed three months, and that the several judges should be empowered to take them up out of order, and proceed at once to their adjudication, which would not only tend to check the evil, but prove a boon to the judgment creditor by rendering the property when fictitiously or collusively claimed, available for the enforcement of his award.

17. From the operation of the negative prescription created by the aforementioned rules of limitation, are likewise excepted all claims founded on bonds in a course of payment by misstatements, or of which any proportion shall have been paid within twelve years previous to the institution of the suit; but by the 2d clause of this section such would appear to be limited to six years, which I regard as a great improvement upon the existing law; constant disputes arising in almost all cases where debts are in a course of payment by instalments, and a wide door for fraud opened in the fabrication of acknowledgments for the alleged payments.

18. It seems that immoveable property which remains in the hands of the mortgager, and the mortgagee without obtaining possession has only a lien upon it, is also included in the 2d clause of this section, and to which objections have been raised by many intelligent natives, who have perused the Draft Act translated into the local languages, as they loudly complain of the period of six years being too limited to allow of the mortgagee obtaining a fair return for his money. I must confess their objections appear to me well founded, so many mortgages of this nature existing throughout the provinces of Malabar and Canara, but especially in the former, where the land is burthened with every species of claim; and as they have hitherto been exempted from the rules of limitation, I consider that they should be also entertained under clause 3, with suits for the recovery of legacies.

19. Section 13. I would take the liberty of suggesting that the special rule of the Madras Code, adverted to "in this section, viz. section 16, Regulation V. of 1822," as well as another, whereby persons confined by collectors for arrears of revenue which they deny to be justly due, are at liberty to prosecute the collectors, but are required to institute their action within three months, together with Chapter 8, Regulation XVII. of 1827, of the Bombay Code, should be embodied therein; for though no doubts can arise in the minds of those who have been favoured with a copy of the Law Commissioners' remarks on this Act, I would mention that a well-informed native stated to me only a day or two back that he considered the "shorter period" to apply to suits for setting aside the summary decisions of the courts, which shows that mistakes may arise on this subject.

20. Section 17. I consider the provisions of this section to be superior to those of section 6, in the published Draft of the 5th April 1841, as also a marked improvement on the Madras Code, by "which exception is allowed on account of the minority of the claimant, or other good and sufficient cause," it being more advantageous for all parties that the law should "specify the causes for which exception from the rules of prescription shall be allowed, and not to leave any discretion to the courts." I am of opinion likewise that the absence for no longer time than five years over the stated period, and out of the Company's territories, the territories contiguous, and the Island of Ceylon, instead of beyond the seas, and for the period of 20 years as it stands in the published Draft, will prove a most beneficial change. I further readily concur, that "it would not be expedient to allow absence merely out of the Company's territories to bar prescription, and that it is not too strict to deny the proposed indulgence to persons who have resided anywhere within the contiguous territories or the adjacent Island of Ceylon, while they have been out of the limits of the Company's dominions;" the plea of absence in the adjacent states of Mysore, Cochin, and Travancore being so repeatedly urged by the inhabitants of the coast, in support of their right to advance an antiquated claim barred by the Statute of Limitation.

21. Although unprepared to advocate the "introduction into this draft of a provision, corresponding with section 5 of the published Draft, by which it is proposed, 'that every application for the execution of a decree after the expiration of one year from the time of passing thereof, shall be considered as a suit,'" and

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and subject to the rules of regular suits, and the stamp duties chargeable thereon, I still consider the law as it now stands most defective, and needing immediate correction. At present decree holders can apply to the courts for execution of their decrees after the lapse of many years, and several awards are now under satisfaction in the zillah of Canara, which were passed by the native commissioners as far back as the year 1812. It is an evil of some magnitude, which bears heavily upon the people, and I would conclude these remarks by expressing my sincere hope that the Law Commissioners will not lose sight of the subject; but in the Draft Act relative to insolvency, now under preparation, a limited period of years will be fixed, after which, process of execution shall not be allowed by the courts.

22. I have to apologize, first for the delay in submitting these remarks, and secondly for their brevity; but my absence on circuit when favoured with the draft of the Act, and subsequent reluctance to offer an opinion upon matters of such vital importance to the community at large, will, I hope, plead my excuse.

(signed) *H. Morris*, Third Judge.

(No. 98.)

Legis. Cons. 21 April 1843. No. 55.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *J. F. Thomas*, Esq. Acting Chief Secretary to the Government of Fort St. George; dated 21st April 1843.

Sir,

I AM directed by the honourable the President in Council to acknowledge the receipt of your letter, No. 149, dated the 28th ultimo, communicating the sentiments of the Suddur Adawlut, and of certain subordinate officers, on the provisions of the Draft Act on the acquirement and extinction of rights by prescription, together with the opinion of the Most noble the Governor in Council thereon, and in reply to request, with reference to that part of the proceedings of the Suddur Court, in which it is stated that Mr. Babington has expressed his inability to understand the Act, without specifying those parts of it which failed to convey a meaning to his mind, that Mr. Babington may be called on through the court to explain particularly what parts of the Draft Act were unintelligible to him.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. 344.)

Legis. Cons. 28 October 1843. No. 17.

From *J. F. Thomas*, Esq. Secretary to the Government of Fort St. George, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India; dated Fort St. George, 17th July 1843.

Judicial Dept.

Sir,

IN compliance with the request conveyed in your letter of the 21st April last, No. 98, I am directed by the Most noble the Governor in Council, to transmit copy of one from the Court of Suddur Adawlut of the 7th instant, and of the communication from Mr. Babington which accompanied it, pointing out the passages in the Draft Act, "on the acquirement and extinction of rights by prescription," "which he does not clearly understand."

I have, &c.

(signed) *J. F. Thomas*,
Secretary to Government.

(No. 68.)

Legis. Cons. 28 October 1843. No. 18.

From *H. D. Phillips*, Esq. Acting Register to the Court of Suddur Adawlut, to *J. F. Thomas*, Esq. Secretary to Government in the Judicial Department; dated Madras, 7th July 1843.

Sir,

WITH reference to the orders of Government, dated 27th May 1843, No. 250, I am directed by the Judges of the Suddur Adawlut to transmit to you, to be laid before

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before the Most honourable the Governor in Council, the accompanying copy of a letter, dated the 28th ultimo, from Mr. Babington, Acting Collector of North Arcot, noticing the passages in the Draft Act on the acquirement and extinction of rights by prescription, which he does not clearly understand.

I have, &c.
(signed) *H. D. Phillips*,
Acting Register.

(No. 49.)

From *W. H. Babington*, Esq. Acting Collector of North Arcot, to *H. D. Phillips*, Esq. Acting Register to the Court of Suddur Adawlut, Madras; dated 28th June 1843.

Judicial Dept. From Officiating Secy. to the Govt. of India, dated 21 April 1843, to Acting Chief Secy. to Govt. Fort St. George.

Sir,

In reply to your letter of the 6th instant, forwarding transcript of the communication noted in the margin, I have the honour to notice below the passages in the Draft Act on the acquirement and extinction of rights by prescription, which I do not clearly understand.

Section I. "The possession shall have been adverse thereto."

I am not acquainted with this expression, which I suppose is technical.

"And provided, that nothing herein contained shall be construed to affect any rights arising from possession of moveable property now recognized by law."

I do not understand what rights are referred to.

Section V. I do not understand any part of this section.

Section VI. I do not understand the phrases, adverse to the "mortgages," and "beneficial owner."

Section VII. I do not understand the phrase "claiming his interest."

Section VIII. I do not understand the exceptions, or the term "adverse possession."

Section IX. I do not understand what "the previous right" is.

Section XXV. I am not certain whether it is or is not meant, that a person may be placed in such circumstances, that though the provisions of this Act debar him from bringing a suit for the recovery of a legacy, debt, or damages, his right may nevertheless remain unextinguished.

I have, &c.
(signed) *W. H. Babington*,
Acting Collector.

From Officiating Secretary to the Government of India to Secretaries to Government of Bengal*, Agra†, Madras‡, and Bombay§; dated 28th October 1843.

* No. 80.
† No. 186.
‡ No. 187.
§ No. 188.

Legis. Cons. 28 October 1843. No. 19 Legis. Dept.

Sir,

In continuation of Mr. Officiating Secretary Halliday's letter of the 21st March 1842, I am directed by the Governor-general in Council to remit to you, for submission to the ——— the accompanying printed papers containing the report of the Law Commissioners, and the opinions of the Judges of the Supreme Courts at Calcutta, Madras and Bombay, and of other officers, on the Draft Act, respecting the acquirement and extinction of rights by prescription, and for the limitation of suits, and to request that the opinions of the Suddur Court, and any other officer competent to advise on the subject, together with the sentiments of his Honour, may be submitted for the consideration of the Supreme Government.

I have, &c.
(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

From the Right Honourable the Governor-general of India in Council to the Honourable the Judges of the Supreme Courts at Calcutta*, Madras†, and Bombay‡; dated 28th October 1843.

* No. 82.
† No. 191.
‡ No. 192.

Honourable Sirs,

In continuation of our letter of the 21st March 1842, we have the honour to forward to you the accompanying printed papers containing the opinions of the Law Commissioners, and other officers, respecting the Draft Act on the acquire-

Legis. Cons. 23 October 1843. No. 20.

No. 1.
Proposed Law as to the Acquirement and Extinction of Rights by Prescription, and for the Limitation of Suits.

ment and extinction of rights by prescription, and for the limitation of suits, and will feel obliged by your communicating any further observations or suggestions which may occur to you.

We have, &c.

(signed) *Ellenborough.*
W. W. Bird.
W. Casement.
C. H. Cameron.

(Home Department.—Legislative.)

(No. 20 of 1843.)

To the Honourable the Court of Directors of the East India Company; dated 11th November 1843.

Honourable Sirs,

In continuation of our despatch from this department, dated 13th May 1842, No. 11, we have the honour to forward the accompanying papers, containing the opinions of the Judges of the Supreme Courts, and of other officers, on the Draft Act respecting the acquirement and extinction of rights by prescription, and for the limitation of suits, and Reports furnished by the Law Commissioners with reference to these opinions.

2. We have forwarded these papers to the Judges, and to the local Governments, for any further observations or suggestions which they may desire to offer.

We have, &c.

(signed) *Ellenborough.*
W. W. Bird.
W. Casement.
C. H. Cameron.

Note.—The printed papers which accompanied the foregoing despatches contain the undermentioned documents:—

Legis. Cons. 21 April 1843. Nos. 42. 44, 45. 49, 50, and parts of Nos. 41 and 47 - - - -	Copies now sent.
Legis. Cons. 5 August 1842. Nos. 12 to 15 - -	Copies sent with Law Commissioners' Special Reports, dated in 1842, *vide* Para. 38. 43, and 45 of Papers printed 30 May 1843.
Legis. Cons. 11 November 1842. No. 13 - -	

— No. 2. —

No. 2.
Copy of the Governor-general's Instructions.

FORWARDING COPY OF THE GOVERNOR-GENERAL'S INSTRUCTIONS UPON WHICH THEIR REPORT ON THE CIVIL SERVICE WAS FURNISHED.

[*Note.*—The last Document connected with the subject of these Papers is contained in the "Special Reports of the Indian Law Commissioners, ordered by the House of Commons to be printed, 30 May 1843," p. 534.]

JUDICIAL DEPARTMENT.

(No. 1 of 1842.)

From the Governor-general of India to the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

I HAVE the honour to transmit to your Honourable Court the reply of the Law Commissioners to my letter of the 4th of April last.

I must admit that the Commissioners show the office of chief justice to be of much more practical utility in England than it would be here.

If at any time a college of justice, such as they propose, should be created, with the chief justice of the Supreme Court at its head, the Sudder judges appointed by the Government of India being members of such college, in conjunction with the puisne judges of the Supreme Court, I cannot but apprehend that the perfect equality in rank and emoluments which the Commissioners would desire to prevail amongst the Sudder judges, would be found practically to have the effect of materially diminishing their influence in such college; while, under any circumstances, the existence at the head of a profession of the highest rank and emoluments, united in the same eminent person, selected on account of his superior attainments and ability, must tend to induce men of character and talents, possessing the proper and useful ambition which usually accompanies such qualities, to select that profession, and to endeavour to raise themselves to the envied height.

However, the duties of the several Sudder judges being now similar, and there not being in India the same degree of security which exists in England for the selection of the fittest men for the highest station, I must, for the present, be content to waive my own opinion, and to acquiesce, although I cannot on principle concur in that more prevalent opinion which would, in India, equalize the rank and salaries of the judges of the Sudder Court.

My time has been so nearly absorbed since I arrived in India by military and political affairs, that I have not had the opportunity of acquiring that practical knowledge which I should desire to possess, before I ventured to offer a decided judgment as to the best mode of affording to those intended for the judicial branch of the service the requisite acquaintance with the people, and with the administration of the law.

No. 2.
Copy of the Governor-general's Instructions.

The Commissioners seem to be of opinion that the highest attainments and the greatest ability which can be found in the civil service should be devoted to the judicial profession, and they suggest expedients, first, for drawing into the civil service all the men of the highest knowledge and talents, and secondly, for making a further selection of the best amongst these so attached to the civil service for the judicial branch thereof.

I doubt whether the greatest future capacity for public business of any kind be in any manner discoverable at the early ages of 17 and 20; and certainly, considering the very unequal means of education, even if such superior capacity were solely the fruit of education, it could not be discovered by the examinations proposed.

In reality, in almost every situation in which a public servant can be placed in India, strength of character is of more value than all the law, and all the literature, and all the philosophy the world can teach, and it would be an error of most fearful consequence to extract, were it possible, all the higher abilities for the sole use of the civil departments of the State, leaving all the military officers by whom alone the State is preserved, to be found amongst the duller and the more inefficient members of the service.

Examination may detect extreme stupidity, but such stupidity should exclude its possessor from both services, and not devote him to that which requires the most of activity and of genius.

Many of the facts stated by the Law Commissioners, and many of the suggestions made by them, will be the subject of much future consideration, and that consideration will, I trust, result in the future improvement of the judicial branch of the service.

At the present time, it is not necessary for me to do more than I have already intimated my readiness to do under existing circumstances, namely, to waive my own preconceived opinion in favour of placing some judicial officer of superior rank, and with superior emoluments, at the head of the Sudder Courts of Justice.

I have, &c.

Allahabad, 12 August 1842. (signed) *Ellenborough.*

Legislative Department.

(No. 17 of 1842.)

Our Governor-general of India in Council.

Report of the Law Commissioners on the Civil Service.

The Governor-general, under date the 12th of August, No. 1, 1842, has transmitted to us in the Judicial Department the copy of a report prepared by the Law Commissioners, in consequence of instructions addressed to them on the 4th of April. We desire that we may be furnished with a copy of those instructions, and with all other information regarding the circumstances under which the Law Commissioners' Report was called for.

We are, &c.

(signed) *J. L. Lushington.* *Geo. Lyall.*
John Cotton. *J. Petty Muspratt.*
W. Astell. *Jno. Masterman.*
J. W. Hogg. *A. Galloway.*
Russell Ellice. *Jno. Lock.*
E. Macnaghten. *Robt. Campbell.*
H. Willock. *W. B. Bayley.*

London, 2 November 1842. *H. Shank.*

No. 2.
Copy of the Governor-general's Instructions.

READ despatch from the Honourable the Court of Directors, dated 2d November 1842, No. 17.

The Honourable the Court of Directors call for the instructions under which the Law Commissioners furnished their Report of the 2d July last, on the legal training in India of the Honourable Company's civil servants, destined for the judicial branch of the service. Cons. 23 Dec. 1842. No. 3.

The subject was under consideration of the Government of India in 1838, and the reference which was then made to the Law Commissioners was reported to the Honourable Court in the despatch from the Judicial Department, dated 12th September 1838, No. 13.

It was decided that the subject should be taken into consideration in connexion with the system of judicial procedure; but the instructions under which the Law Commissioners have furnished a special report not being on record in the office of the secretary in this department, the Honourable the President in Council resolves that the Law Commissioners be requested to furnish a copy of those instructions which shall be transmitted to the Honourable Court as soon as received.

(signed) *F. J. Halliday,*
Officiating Secretary to the Goverment of India.

Fort William,
23 December 1842.

(No. 105.)

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to Secretary to the Indian Law Commission. Cons. 23 Dec. 1842. No. 4.

Sir,

I AM directed by the Honourable the President in Council to request that you will, with the permission of the Law Commissioners, forward a copy of the instructions, dated 4th April last, under which their Report on the Civil Service, dated the 2d July last, was furnished.

I have, &c.

(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

Council Chamber,
23 December 1842.

(No. 1.)

From the Secretary to the Indian Law Commission to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department, dated the 7th January 1843. Cons. 27 Jan. 1843. No. 23.

Sir,

WITH reference to your letter of the 23d ultimo, I am directed by the Indian Law Commissioners to transmit to you a copy of the letter addressed to them by the Right honourable the Governor-general on the 4th April last, to which your letter refers. Law Commission.

I have, &c.

(signed) *J. C. C. Sutherland,*
Secretary, Indian Law Commission.

No. 2.
Copy of the Governor-general's Instructions.

Cons.
27 Jan. 1843.
No. 24.

From the Governor-general of India to the Law Commissioners, &c. &c. &c.

Gentlemen,

The Court of Directors have in their letter of the 3d February 1842 expressed a wish to know my opinion before they came to an ultimate decision as to the salaries hereafter to be allowed to the judges of the Sudder Courts of Calcutta and Allahabad, but before I express my opinion upon that subject I should wish to be made acquainted with the views you entertain upon two or three questions connected with the administration of justice by the Company's courts.

I should wish first to know whether there are any peculiar circumstances in India which render necessary or expedient, in the Company's courts of justice, that equality of rank and of emolument amongst the judges, which does not, as far as I am aware, prevail in any other country. The governments of other nations having been of opinion that the superior advantage and dignity attached to the first station in a court of justice, rendered the possession of that office an object of just ambition to men of superior intellect, knowledge, and character, and had the effect of inducing persons so qualified to devote themselves to the legal profession, thereby securing to the State, where it is so much required, the service of some of its most distinguished subjects, and giving to the courts of justice that authority with the people which it is so necessary to attach to the administration of the law.

I should further wish to be informed, whether in the course of your inquiries it has become a subject of consideration with you in what manner in this country the means of acquiring a knowledge of the law they are to administer can be afforded to such servants of the Company as may select the legal branch of the service, and in what manner competent men can be induced to adhere to that branch of the service when they have adopted it.

I believe the tendency of all recent arrangements with respect to the administration of justice in the provinces of India, has been to narrow in practice the original jurisdiction of all inferior judges, and to take away the original jurisdiction of the superior courts.

I should wish to be informed what circumstances, if any, exist in this country, which here render expedient a course which has been repudiated in our own by every lawyer of eminence of every party; all such having, I think, expressed an opinion, to which Parliament has uniformly deferred, that a judge of appeal having no original jurisdiction could not bring to the decision of questions of law all the desired acuteness of mind and perspicuity of judgment.

No one can be capable of appreciating the value of evidence who has never heard a witness examined, and who is not well acquainted with the mode of conducting causes in courts of justice, and generally with the national character, as well as with the national languages; for upon the value of such evidence and upon such knowledge of character and of language the decision must in most cases depend.

I desire to be able to lay before the Court of Directors, not merely an opinion as to the salary of a judge, but as to the expediency of the judicial system as now established, with which the remuneration for judicial service is intimately connected.

There may be peculiarities in the people in India which may render that expedient or necessary here, and even conducive to the due administration of justice, which in our country, and in other countries, would be deemed to have a contrary tendency; but to give justice to the people is the first duty of a government

No. 2.
Copy of the Governor-general's Instructions.

government, and to the attainment of that object all minor considerations must be postponed, and if the "rule of service" be opposed to that object, it must give way to the "rule of right."

I have, &c.

Calcutta, 4 April 1842. (signed) *Ellenborough.*

(A true Copy.)

Indian Law Commission Office, 5 January 1843. (signed) *J. C. C. Sutherland,* Secretary Indian Law Commission.

LEGISLATIVE DEPARTMENT.

(No. 2 of 1843.)

From the Government of India to the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

ON the receipt of your Honourable Court's despatch, No. 17 of 1842, dated 2d November, we recorded a resolution, and obtained from the Indian Law Commissioners a copy of the instructions issued to them by the Right honourable the Governor-general on the 4th of April last, upon which their Report on the civil service was furnished; we now have the honour to forward a copy of those instructions.

Legis. Cons. 23 Dec. 1843. Legis. Cons. 27 Jan. 1843.

2. We transmit also the Governor-general's despatch to your Honourable Court, dated 31st December 1842, No. 1 of 1843, which his Lordship wishes us to forward, with a copy of the document in question, which, however, was not in our records until obtained from the Law Commission Office.

We have, &c.

(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

Fort William, 27 January 1843.

(No. 1 of 1843.)

From the Governor-general of India to the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

I HAVE the honour to acknowledge the receipt of your letter, No. 17 of 1842, relative to the reply of the Law Commissioners to a letter addressed to them by me on the 4th of April, desiring to have a copy of that letter and all other information regarding the circumstances under which the Law Commissioners' "Report" was called for.

Legislative.

2. All such information is contained in the first sentence of the letter of the 4th of April. I regret that I did not transmit it, together with the reply made by the Law Commissioners; I now send it in the Judicial Department, to which, as it

No. 2.
Copy of the Governor-general's Instructions.

relates to the administration of justice, and has no reference to any legislative measure, it would seem to belong.

3. There has been no further correspondence upon the subject.

I have, &c.

Camp, Ferozepore, 31 Dec. 1842. (signed) *Ellenborough.*

(No. 1 of 1843.)

From the Junior Secretary to the Government of India with the Governor-general, to *F. J. Halliday*, Esq. Officiating Secretary Government of India, Judicial Department.

Sir,

Judicial.

The letter of Lord Ellenborough to the address of the Law Commissioners, alluded to in the accompanying despatch, not being in this office, I am directed to request that you will, with the permission of the Honourable the President in Council, cause a copy of the document to be made in duplicate, and forwarded with the despatch to Bombay, for transmission to England by the next overland mail.

I have, &c.

Camp, Moodkee, 6 Jan. 1843. (signed) *C. G. Mansel,* Junior Secretary Government of India with the Governor-general.

—No. 3.—

ON THE JUDICIAL ESTABLISHMENTS OF THE PRESIDENCIES OF BENGAL, MADRAS AND BOMBAY.

[*Note.*—The last document connected with the subject of these Papers is contained in the "Special Reports of the Indian Law Commissioners, ordered by the House of Commons to be printed, 30 May 1843," page 534.]

JUDICIAL DEPARTMENT.

(No. 1 of 1842.)

From the Governor-general of India, to the Honourable the Court of Directors of the East India Company; dated 12 August 1842.

Honourable Sirs,

No. 3. On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

I HAVE the honour to transmit to your honourable Court the reply of the Law Commissioners to my letter of the 4th of April last.

I must admit that the Commissioners show the office of chief justice to be of much more practical utility in England than it would be here.

If at any time a College of Justice, such as they propose, should be created, with the Chief Justice of the Supreme Court at its head, the sudder judges appointed by the Government of India being members of such College, in conjunction with the Puisne Judges of the Supreme Court, I cannot but apprehend that the perfect equality in rank and emoluments, which the Commissioners would desire to prevail amongst the sudder judges, would be found practically to have the effect of materially diminishing their influence in such College, while under any circumstances the existence at the head of a profession of the highest rank and emoluments, united in the same eminent person, selected on account of his superior attainments and ability, must tend to induce men of character and talents, possessing the proper and useful ambition which usually accompanies such qualities, to select that profession, and to endeavour to raise themselves to the envied height.

However, the duties of the several sudder judges being now similar, and there not being in India the same degree of security which exists in England for the selection of the fittest men for the highest station, I must, for the present, be content to waive my own opinion, and to acquiesce, although I cannot on principle concur in that more prevalent opinion, which would in India equalize the rank and salaries of the judges of the Sudder Court.

My time has been so nearly absorbed, since I arrived in India, by military and political affairs, that I have not had the opportunity of acquiring that practical knowledge which I should desire to possess before I ventured to offer a decided judgment as to the best mode of affording, to those intended for the judicial branch of the service, the requisite acquaintance with the people and with the administration of the law.

The Commissioners seem to be of opinion, that the highest attainments and the greatest ability which can be found in the civil service should be devoted to the judicial profession; and they suggest expedients, first, for drawing into the civil service all the men of the highest knowledge and talents, and secondly, for making a further selection of the best amongst these so attached to the civil service, for the judicial branch thereof.

I doubt whether the greatest future capacity for public business of any kind be in any manner discoverable at the early ages of 17 and 20, and certainly, considering the very unequal means of education, even if such superior capacity were solely the fruit of education, it could not be discovered by the examinations proposed.

In reality, in almost every situation in which a public servant can be placed in India, strength of character is of more value than all the law and all the literature and all the philosophy the world can teach; and it would be an error of most fearful

No. 3.
On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

consequence to extract, were it possible, all the higher abilities for the sole use of the civil departments of the State, leaving all the military officers, by whom alone the State is preserved, to be found amongst the duller and the more inefficient members of the service.

Examination may detect extreme stupidity; but such stupidity should exclude its possessor from both services, and not devote him to that which requires the most of activity and of genius.

Many of the facts stated by the Law Commissioners, and many of the suggestions made by them, will be the subject of much future consideration, and that consideration will, I trust, result in the future improvement of the judicial branch of the service.

At the present time it is not necessary for me to do more than I have already intimated my readiness to do under existing circumstances, namely, to waive my own pronounced opinion in favour of placing some judicial officer of superior rank, and with superior emoluments, at the head of the Sudder Courts of Justice.

I have, &c.

Allahabad, 12 August 1842. (signed) *Ellenborough.*

LEGISLATIVE DEPARTMENT.

(No. 17 of 1842.)

Our Governor-general of India in Council.

Report of the Law Commissioners on the Civil Service.

THE Governor-general, under date the 12th August (No. 1) 1842, has transmitted to us in the Judicial Department the copy of a Report prepared by the Law Commissioners in consequence of instructions addressed to them on the 4th of April. We desire that we may be furnished with a copy of those instructions, and with all other information regarding the circumstances under which the Law Commissioners' Report was called for.

We are, &c.,

(signed) *J. L. Lushington.* *George Lyall.*
John Cotton. *J. Petty Muspratt.*
W. Astell. *John Masterman.*
J. W. Hogg. *A. Galloway.*
Russell Ellice. *John Lock.*
E. Macnaghten. *Robert Campbell.*
Henry Willock. *W. B. Bayley.*
H. Shank.

London, 2 November 1842.

FORT WILLIAM, Legislative Department, the 23d December 1842.

READ despatch from the honourable the Court of Directors, dated 2 November 1842, No. 17.

No. 3.

THE honourable the Court of Directors call for the instructions under which the Law Commissioners furnished their Report, dated the 2d July last, on the legal training in India of the honourable Company's civil servants destined for the judicial branch of the service.

This subject was under the consideration of the Government of India in 1838, and the reference which was then made to the Law Commissioners was reported to the honourable Court in the despatch from the Judicial Department, dated 12th September 1838, No. 13.

It was decided that the subject should be taken into consideration in connexion with the system of judicial procedure; but the instructions under which the Law Commissioners have furnished a special Report not being on record in the office of the secretary in this department, the honourable the President in Council resolves

No. 3.
On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

resolves that the Law Commissioners be requested to furnish a copy of those instructions, which shall be transmitted to the honourable Court as soon as received.

(signed) *F. J. Halliday,*
Officiating Secretary to Government of India.

(No. 105.)

No. 4.

From *F. J. Halliday*, Esq., Officiating Secretary to Government of India, to *J. C. C. Sutherland*, Esq., Secretary Indian Law Commission; dated 23 December 1842.

Sir,

I AM desired by the honourable the President in Council to request that you will, with the permission of the Law Commissioners, forward a copy of the instructions, dated 4th April last, under which their Report on the Civil Service, dated the 2d July last, was furnished. Legis. Department.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to Government of India.

Council Chamber, 23 December 1842.

(No. 1.)

From *J. C. C. Sutherland*, Esq., Secretary Indian Law Commission, to *F. J. Halliday*, Esq., Officiating Secretary to Government of India, Legislative Department; dated 7 January 1843.

Sir,

WITH reference to your letter of the 23d ultimo, I am directed by the Indian Law Commissioners to transmit to you a copy of the letter addressed to them by the Right honourable the Governor-general on the 4th April last, to which your letter refers. Law Commission.

I have, &c.
(signed) *J. C. C. Sutherland,*
Secretary Indian Law Commission.

From the Right honourable the Governor-general of India in Council, to the Law Commissioners, &c., &c., &c.; dated 4 April 1842.

Gentlemen,

THE Court of Directors have, in their letter of the 3d February 1842, expressed a wish to know my opinion before they come to an ultimate decision as to the salaries hereafter to be allowed to the judges of the Sudder Courts of Calcutta and Allahabad; but before I express my opinion upon that subject, I should wish to be made acquainted with the views you entertain upon two or three questions connected with the administration of justice by the Company's Courts.

I should wish first to know, whether there are any peculiar circumstances in India which render necessary or expedient in the Company's Courts of Justice that equality of rank and of emolument amongst the judges, which does not, as far as I am aware, prevail in any other country. The governments of other nations having been of opinion that the superior advantage and dignity attached to the first station in a court of justice rendered the possession of that office an object of just ambition to men of superior intellect, knowledge and character, and had the effect of inducing persons so qualified to devote themselves to the legal profession, thereby securing to the State, where it is so much required, the service

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On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

of some of its most distinguished subjects, and giving to the courts of justice that authority with the people which it is so necessary to attach to the administration of the law.

I should further wish to be informed, whether, in the course of your inquiries, it has become a subject of consideration with you, in what manner in this country the means of acquiring a knowledge of the law they are to administer can be afforded to such servants of the Company as may select the legal branch of the service, and in what manner competent men can be induced to adhere to that branch of the service when they have adopted it.

I believe the tendency of all recent arrangements, with respect to the administration of justice in the provinces of India, has been to narrow in practice the original jurisdiction of all inferior judges, and to take away the original jurisdiction of the superior courts.

I should wish to be informed what circumstances, if any, exist in this country, which here render expedient a course which has been repudiated in our own, by every lawyer of eminence of every party; all such having, I think, expressed an opinion, to which Parliament has uniformly deferred, that a judge of appeal, having no original jurisdiction, could not bring to the decision of questions of law all the desired acuteness of mind and perspicuity of judgment.

No man can be capable of appreciating the value of evidence who has never heard a witness examined, and who is not well acquainted with the mode of conducting causes in courts of justice, and generally with the national character, as well as with the national languages; for upon the value of such evidence, and upon such knowledge of character and of language, the decision must in most cases depend.

I desire to be able to lay before the Court of Directors not merely an opinion as to the salary of a judge, but as to the expediency of the judicial system, as now established, with which the remuneration for judicial service is intimately connected.

There may be peculiarities in the people in India, which may render that expedient or necessary here, and even conducive to the due administration of justice, which in our country and in other countries would be deemed to have a contrary tendency; but to give justice to the people is the first duty of a government, and to the attainment of that object all minor considerations must be postponed; and if the "rule of service" be opposed to that object, it must give way to the "rule of right."

I have, &c.

Calcutta, 4 April 1842. (signed) *Ellenborough.*

(A true copy.)

(signed) *J. C. C. Sutherland,*
Secretary Indian Law Commission.

Indian Law Commissioners' Office,
5 January 1843.

(Legislative Department, No. 2 of 1843.)

From the Government of India to the Honourable the Court of Directors of the East India Company; dated 27 January 1843.

Honourable Sirs,

Leg. Cons. 23 December 1843, No.
Leg. Cons. 27 January 1843, No.

On the receipt of your honourable Court's despatch, No. 17 of 1842, dated 2d November, we recorded a resolution, and obtained from the Indian Law Commissioners a copy of the instructions issued to them by the Right honourable the Governor-general on the 4th April last, upon which their Report on the Civil Service was furnished. We now have the honour to forward a copy of those instructions.

2. We

No. 3.
On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

2. We transmit also the Governor-general's despatch to your honourable Court, dated 31st December 1842, No. 1 of 1843, which his Lordship wishes us to forward, with a copy of the document in question, which however, was not in our records until obtained from the Law Commission Office.

We have, &c.

(signed) *W. W. Bird.*
W. Casement.
H. T. Prinsep.
A. Amos.

Fort William, 27 January 1843.

(No. 1 of 1843.)

From the Governor-general of India to the Honourable the Court of Directors of the East India Company; dated 31 December 1842.

Honourable Sirs,

I HAVE the honour to acknowledge the receipt of your letter, No. 17 of 1842, relative to the reply of the Law Commissioners to a letter addressed to them by me on the 4th of April, desiring to have a copy of that letter, and all other information regarding the circumstances under which the Law Commissioners' "Report" was called for. Legislative.

2. All such information is contained in the first sentence of the letter of the 4th of April; I regret that I did not transmit it, together with the reply made by the Law Commissioners. I now send it in the Judicial Department, to which, as it relates to the administration of justice, and has no reference to any legislative measure, it would seem to belong.

3. There has been no further correspondence upon the subject.

I have, &c.

(signed) *Ellenborough.*

Camp Ferozepore, 31 December 1842.

(No. 1 of 1843.)

From the Junior Secretary to Government of India, with the Governor-general, to *F. J. Halliday*, Esq., Officiating Secretary to Government of India, Judicial Department.

Sir, Camp Moodkee, 6 January 1843.

THE letter of Lord Ellenborough to the address of the Law Commissioners, alluded to in the accompanying despatch, not being in this office, I am directed to request that you will, with the permission of the honourable the President in Council, cause a copy of the document to be made in duplicate, and forwarded with the despatch to Bombay for transmission to England by the next overland mail. Judicial Dept.

I have, &c.

(signed) *C. G. Mansel,*
Junior Secretary to Government of India,
with the Governor-general.

No. 3.

(No. 536 of 1835.)

Judicial Criminal Cons. 20th April 1835.

From *C. Norris*, Esq., Chief Secretary to the Government of Bombay, to the Secretary to the Government of India, Fort William ; dated 10 March 1835.

No. 8.

Sir,

I AM directed by the Right honourable the Governor in Council to transmit to you, for the purpose of being laid before the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the Register to the Sudder Foujdarry Adawlut, and of its enclosed circuit report from Mr. Anderson, Judicial Visiting Commissioner for the Deccan as containing matter in paragraphs 10 to 44, for the consideration of the Indian Law Commission.

I have, &c.

(signed) *C. Norris*,
Chief Secretary.

Bombay Castle, 10 March 1835.

From *P. W. Le Geyt*, Esq., Register of Sudder Dewanny and Sudder Foujdarree Adawlut, at Bombay, to the Chief Secretary to Government, Bombay; dated 12 December 1834.

Sir,

I AM directed by the Judges of the Sudder Dewannee and Sudder Foujdarree Adawlut, to forward to you, for the purpose of being submitted to the Right honourable the Governor in Council, the accompanying copy of the circuit report from the Judicial Commissioner for the Deccan and Candeish, and to remark, that they consider it to contain important observations on the working of the judicial system in the districts within his range.

2. In reference to the third paragraph of the report, I am instructed to state, that a circular has been addressed to the several zillah judges, calling the attention of the native judicial functionaries within their respective limits to the improvements suggested in their proceedings in this paragraph.

3. With respect to the suggestion offered in the 10th paragraph, that will, doubtless, form a subject for consideration before the Law Commissioners, the more particularly as it may operate as a relief to the revenue officers in their multifarious duties.

4. I am directed to inform you, that an estimate has been called for of the alteration suggested in the 22d paragraph, which appears to be essential, from the circumstances stated.

5. With respect to the improvements suggested by the Judicial Commissioner in the 24th to 27th paragraphs, the attention of the local authorities has been drawn to them, and they will from time to time be urged to a completion.

6. The subject mentioned in paragraph 34 is under consideration; and the cost at Poonah, as compared with Ahmednuggur, for the subsistence of the prisoners, will be reduced as far as the comparative prices of food of the people at the two places will admit.

7. The suggestion offered in the 37th paragraph has been urged in the strongest terms on those session judges in whose zillahs such delay has occurred.

8. In reference to paragraph 40, the court has expressed its disappointment to the authorities therein mentioned, that so much delay has occurred in replying to references on points of so much importance.

9. The suggestion in paragraph 44 will, doubtless, occupy the attention of the Law Commissioners; and it may be a question whether the wording of clause 2, section 35, of Regulation XII. of 1827, might not admit of modification, or that clause be rescinded.

10. I am instructed to observe, that for the reasons urged in the 47th paragraph, the court considers the trial of the offences in question should, for the most part, and with advantage to the public service, be conducted by the session judges, and a recommendation from the Government to that effect to the collectors would be sufficient, should it concur in the measure.

11. The

11. The court considers the recommendation in paragraphs 54 and 55, that the assistant judges generally may have extended powers to be worthy of adoption, which will render the adoption also of the suggestion in the 57th paragraph essential.

12. I am directed to state, that the suggestions in paragraphs 59 and 62 are separately under the consideration of the court.

I have, &c.

(signed) *P. W. Le Geyt*,
Register.

Bombay, Sudder Dewannee and Sudder Foujdaree Adawlut,
12 December 1834.

From *G. W. Anderson*, Esq., Judicial Commissioner at Bombay, to *P. W. Le Geyt*, Esq., Register of the Sudder Dewannee and Sudder Foujdarree Adawlut, Bombay; dated 29 November 1834.

Sir,

I DO myself the honour to submit the report required by section 12, Regulation III. of 1830, on the conclusion of the circuit I have made this year in the zillahs of Ahmednuggur and Poonah.

Circuit Report for the zillahs of Ahmednuggur and Poonah.

2. The administration of civil justice in the zillahs of Ahmednuggur and Poonah is effective, the decision of suits is very fairly speedy, exceedingly few suits in either zillah being on the file for so long a period as one year, and not many longer than two or three months.

Civil Justice.

3. In respect to the nature of the decisions or description of justice administered, it is well spoken of generally. The proportion of appeals and the proportion of reversals, as lately noticed by the Sudder Dewannee Adawlut, in its annual report to Government, is fair proof of the justness of the general opinion. Some things may be wanting, perhaps nothing more so than a better mode of compressing the proceedings on trials; so that the principal evidence and ground on which the decision rests should be more distinctly and prominently brought forward out of the mass of matter that is generally found on the record. I notice this, because it was one of the great faults of the written proceedings of the punchayet tribunals; and I see, from some records I have had occasion to look into of the native commissioners, that it is a fault into which they too are inclined to indulge.

4. At Ahmednuggur there was a rather longer arrear of appeals before the assistant judge than is usual; I pointed this out to the judge, and requested him to observe to his assistant, that where there was any arrear, it was expected by Government, and it was due to the public, that he should at least give six or seven hours a day of unremitting attention to the duties of his court.

5. In remarking that the disposal of suits is speedy, I should state that the amount value of property litigated is exceedingly small, and therefore, that the actions being generally for small debts due on account of advances or on bonds, or notes of hand, and suits are rarely intricate, but must be mostly of that description, on which the examination of a few books of account, and hearing two or three witnesses, is sufficient.

Property litigated, small.

6. At Ahmednuggur, in the month of August last, out of 327 decisions on merits, I found 304 were for sums below 100 rupees; 21 for sums between that and 500 rupees; and only 2 for sums above 500 rupees.

7. In the year 1833, in the same zillah, the whole number of decisions on merits was 3,586; of these, on suits below 100 rupees the number was 3,353; from 100 to 500 rupees the number was 196; above 500 rupees, only 37. The appeals on these suits below 100 rupees was 133; from 100 to 500 rupees, 40; above 500 rupees, 9. Thus showing, that as the value of the property at stake increases, the proportion of appeals rises.

8. In the same year, 1833, in the zillah of Poonah, the whole number of decisions on merits was 4,019; of these, on suits below 100 rupees, the number was 3,701; from 100 to 500 rupees, the number was 251; above 500 rupees, only 67. The appeals on these suits below 100 rupees, was 150; from 100 to 500 rupees, 51; above 500 rupees, 16.

9. The small value of property litigated here exhibited, shows the general poverty of the people; that commerce is comparatively trifling, and that the chief occupation of life is agriculture, but in which no great capital is employed. In the

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the disputes that occur connected with land and its tenure, the money value is always small; while in actions for debt or disputed transactions, it is in vain we look for those suits of vast amount denoting a wealthy mercantile or trading people, or rich agriculturist, which we find to prevail in the province of Guzerat.

10. With this vast proportion of small suits to decide, it is obvious too that the native commissioners have no very arduous duty to perform. Their labours might be increased without inconvenience; for instance, if at any time it should be thought advisable to vest them with a part of the administration of criminal justice, their time must be considered as abundantly equal to it.

11. A reduction in the number of these functionaries is, I conceive, alone prevented from the extent of the districts of the Deccan; for it is not only essential the justice should be speedy and good, but that parties should not have to travel to inconvenient distances to obtain it.

Applications for and proportion of Decrees executed.

12. In order to ascertain how the administration was effective in the thing or matter decided, being made over to the party in whose favour the decree was passed, I obtained some statements to show how this was; and taking the year 1832, I found at Ahmednuggur that of 3,240 decrees passed, the applications for execution were 1,168; that in these, 848 complete executions took place, and 23 in part.

13. At Poonah in the same year, the number of decisions were 4,818, the applications for executions was 1,117, the number where complete execution was obtained was 975, part 142.

14. I consider this result favourable; the number of absolute executions to the number of applications is great, while in several instances compromises may have been made; it shows vigour in the administration, and that the decisions of the courts are not that idle form which sometimes they are asserted to be.

Debtors in confinement.

15. At Ahmednuggur I found 16 persons in confinement for debt; of these one person's debt amount to 637 rupees, another to 196 rupees, another to 71 rupees, another to 70 rupees; all the rest were below 40 rupees. The person whose debt amounted to 71 rupees had been in prison upwards of two years, so that the subsistence paid by the creditor exceeded the original debt due to him.

16. At Poonah the number of debtors in confinement was 17; of these the debt of one person amounted to 2,751 rupees, another 450 rupees, three between 100 and 200 rupees, the rest under.

Gaol at Ahmednuggur.

17. In visiting the gaol at Ahmednuggur, I had the greatest satisfaction in finding that the various improvements that were suggested and sanctioned by Government in the end of 1831 had been completed, and fully answered every expectation that had been held out.

18. The gaol is now capable of containing 450 prisoners with ease; the number it had been calculated to contain before the alteration was only 150 prisoners.

19. The prisoners are well divided, the convicts from the untried, except in one respect, which I proposed to be altered; minor offenders from the more heinous; Brahmins and the higher castes distinct from other convicts; and the female prisoners entirely and effectively separated from all. There are separate yards for these different classes, and in each a large open cistern, into which an ample supply of water is brought, and which afterwards passes through the different drains to the river; the nuisance to the town, which in this respect was so much complained of, is now entirely obviated, and the gaol is now, as regards cleanliness, the most perfect of any that I am acquainted with.

20. The flat roofs of the cells afford walks for the sentries so connectedly, that the whole gaol, except in one point which I shall allude to, is overlooked and singularly well guarded, as well from attempts at escape from within, as attacks from without; it is, in fact, almost a fortress.

21. The expenditure incurred in the alterations of 1831 was considerable, but it has been made with an ample return of benefit in every respect that should be considered in the completeness of a gaol; in sufficiency of room for the demand of the zillah, in due separation of the different classes of prisoners in healthiness, when before the alteration the failure in this respect was a source of the most serious complaint; every desired object, in fact, has been attained, and we have now for this zillah, for which for years a new gaol was continually a subject of urgent reference, as complete a prison as the original position would admit of. The additional number of convicts it will contain is 300, a number which the new gaol at Surat, at a cost of upwards of a lakh of rupees, was only calculated for.

22. In

22. In an inclosure or yard to the north-east of the gaol, a most excellent work-shed has been erected; unfortunately, however, the roof is so high that it covers the outer wall from the sentries that overlook the rest of the gaol. It is essential to alter this, for in an attempt to escape at Ahmedabad, where there was a precisely similar faulty construction, the loss of life was terrible.

Gaol at Poonah.

23. At Poonah I found 421 convicts in the Panopticon gaol, and in the gaol in the Sunwar palace, in the city, I found 116 prisoners.

24. The Panopticon is an excellent gaol of its kind, but the place of confinement in the Sunwar palace is bad, and on no regular plan of a gaol. The pace is large, and the surrounding wall excellent; in time the prisoners at little or no cost might construct buildings sufficient for all purposes; at present they are all huddled together without classification in one building, which is close and inconvenient, and in respect to which the prisoners made some complaints.

Orig.

25. Some improvements were suggested by the joint judge, in which the judge concurred, for a better separation of prisoners in the Panopticon. I saw no objection to what was proposed, but the alterations ought to be effected mainly by the convicts, with but very little cost to Government.

26. The women prisoners are in sheds, surrounding the wall of the work-sheds; the place is very confined, and badly adapted for its purpose; the women are, however, kept quite distinct from the male convicts, which indeed is the only favourable thing attending their present place of confinement.

27. On any improvement in the gaol of the Sunwar palace, a distinct ward and inclosure might be easily provided for the women, so as to leave nothing in respect of their place of confinement of which complaint can be made.

In-door labour.

28. In-door labour at both Ahmednuggur and Poonah is improving; at Ahmednuggur an excellent work-shed has been erected, and I saw several prisoners at work on looms.

29. At Poonah in-door labour has been longer and more systematically pursued; carpets, cloths, table-cloths, napkins, are manufactured, and find a tolerably ready sale. Ratan baskets and other ratan work has been introduced by the Chinese convicts, and when better known will sell; I found also preparations for a paper manufactory, and generally a better spirit to prevail in carrying on in-door labour than I formerly observed.

30. The advantages of in-door labour are too obvious, and have been so frequently noticed, that I need not do more here than to allude to the subject. Its success depends mainly upon perseverance, and hence greatly upon the taste, if I may so express it, of the individual judge in charge of the gaol. I am confident in such cases, that is, where there is activity and attention on the part of the judge, and where due encouragement is given by Government in directing the purchases of such commissary or other stores as can be manufactured at the gaol, that the whole expense of keeping the prisoners would be defrayed by the value of their labour.

Solitary imprisonment.

31. There were no prisoners in solitary confinement at either gaol at Poonah; there are six cells affording the best means for this description of imprisonment; on any occasion, therefore, where it may be desired to enforce this punishment with severity, prisoners to the above extent might be sent to Poonah.

Juvenile prisoners and offenders confined for a second offence.

32. The number of juvenile prisoners, that is under the years of age at Ahmednuggur was 5, at Poonah 3, and of persons confined at the former for a second offence 10, at Poonah 15.

Cost of Convicts.

33. The cost of a convict in the Ahmednuggur gaol to Government in his food and clothing in a year is Rs. 25. 2. 97.; at Poonah, Rs. 34. 15. 1.

Costs of Convicts.

34. I have already brought this subject to the attention of the Court; it arises chiefly from a more costly grain being supplied to the prisoners at Poonah. This can of course be rectified; the most common grain, provided only that it is wholesome, should be supplied.

Untried prisoners at Ahmednuggur.

35. I regret that the number of untried prisoners at Ahmednuggur was considerable; it was 128, forming 41 cases for trial. The number of untried prisoners at Dhoolia was nearly as great. I, in consequence, immediately addressed Government that the powers provided in section 13, clause 4, Regulation XIII. of 1827, might be extended to the first assistants of the two zillahs of Ahmednuggur and Khandeish; before I quitted the station, the powers, as applied for, were granted.

36. In all instances where there is any probability of delay in trials, from the quantity of business being more than the judge can readily dispose of, the assistant

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should be vested with the enlarged powers the Regulation provides; it is alone necessary that an assistant should be duly qualified, and this can always be calculated upon after a service of seven or eight years.

37. It is of course of vast consequence that prisoners should be tried speedily, not only as respects the essentials of justice, but in consideration to witnesses, who have frequently to make long journies at times and seasons most unfavourable to occupations by which they have to gain their livelihood. The object to attain, if possible, is, that the witnesses should have to make but one trip to the sudder station, and this can only be effected by the trials being taken up and disposed of immediately as they come in; I particularly directed this to the attention of the session judge at Ahmednuggur, and think the principle might, with advantage, be noticed to all session judges.

38. The state of business in the criminal trials was far more favourable at Poonah, the number of untried prisoners being 47, forming 10 cases. This is of course to be attributed to the aid afforded by the joint judge.

Proceedings kept in English by the Judges.

39. I had occasion on petitions to look into the proceedings on trials of both the session judges at Ahmednuggur and Poonah, and I am happy to report that I found the whole proceedings kept with great regularity, and the different forms required by the Regulations, and the instructions of the Sudder Foujdaree Adawlut, carefully attended to. The records of the trials are in English, and the original record in the handwriting of the judges. This I consider very satisfactory, and a great security that justice is well done. The absence of this use of the English language on the part of the magistrates is, perhaps, one cause of the judicial business transacted by these officers being less satisfactory than that which comes from the judges.

Police, and state of crimes

40. I addressed letters to the magistrates of Ahmednuggur and Poonah, for information, as to the police, and the working of some changes that had been effected in the establishments at the end of the year 1831. I requested information also as to whether there was reason to believe that they had carried on their operations to any extent in the Deccan, and as to the prevalence of any particular description of heinous offences, and also if there was reason to apprehend that the sale of children into slavery was much practised. I regret to report that I have received no reply to these letters, and in the change that has now taken place in the magistrates, I fear that, perhaps, none is to be expected. It would be advisable that magistrates should be instructed to reply to letters calling for such reports as are above indicated, with as little delay as possible.

41. I am glad to state that the formidable offence, lately so peculiar to the Deccan, of plundering in large overwhelming gangs under the denomination of Bunds, has for the present, entirely ceased; the great example that has been made in the execution of almost all the principal leaders, and in the transportation and punishment of many of the followers, has brought about this effect. The vigorous measures pursued to check this offence distressed and dispirited those engaged in it, while they were terrified at witnessing the inevitable operation of the laws upon those who were their leaders, and who, under the previous Government, had generally contrived to escape.

42. Robbery on the highway has also much decreased, and a greater security is felt on the Poonah road, from a judicious measure of the late magistrate, in having established a constant patrol on it of the auxiliary horse; the best use I have known that body of late to be put to.

Case of murders by Thugs.

43. A case of murder of some travellers by Thugs occurred in the Poonah zillah whilst I was there. The use of the roomal (handkerchief) in strangling the unfortunate victims, leaves no doubt that amongst the gang there must have been some old and expert practitioners. The trial having been referred to the court for confirmation, I need not dwell upon the circumstances of the case; a fearful example has been made; our own authorities are alive to the practice of the offence, though still I think not a frequent one in our districts, and under the general energetic measures now pursuing throughout India, it may be fairly trusted that these offenders, perhaps amongst the worst criminals of the human race, will become exterminated.

44. Some alteration of our Regulations may be requisite in respect to receiving with less restriction the evidence of approvers; in these cases, and also in the rule which sets an approver at liberty after his evidence is given, I believe it is found that a person once engaged as a Thug, never foregoes the practice; it is evidently, therefore, not safe to set them at large again on society. The condition

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of the pardon should be safety of life, and, if not transported, that they should live under perpetual surveillance; few, however, should be saved from transportation.

45. I regret to report that I found many delinquents in the gaols of the two zillahs, native servants, chiefly of the Revenue Department, found guilty of peculation. It is beyond doubt that corruption has prevailed to a dreadful extent amongst the revenue servants of the Deccan. This corruption is, I believe, to be attributed in these districts much to the system that has prevailed of granting extensive remissions in the revenue, a system which leagues the cultivator with the public officer in one interest to deceive and defraud the Government. The attention of the European authorities has of late been greatly applied to check the evil, and this, with the greater facilities afforded by some late Regulations, though something is still wanting in this respect, has been attended with considerable effect.

Many cases of Revenue servants guilty of corruption; remarks on.

46. Still, perhaps, there is no part of our management more difficult than this, of dealing with charges against our native officers; we find them corrupt; experience testifies that this turpitude, this spirit of peculation, is fearfully prevalent amongst them; our confidence in their uprightness is continually betrayed, and yet it is certain that there is nothing so easy as to make up charges against them, so easy, that it is common to say that "no honest man can with safety serve the Government;" of this we may be sure, that the authority who turns a greedy ear to receive these charges, will have his time occupied in little else; amongst many unfounded charges, he will find some true; but there will be a constant suspicion. I need not say how destructive to the good working of his establishment, how fatal to the due performance of his other duties.

47. The native officers require from us protection, not favour; a dispassionate consideration of circumstances of evidence, a weighing of probabilities, by which to judge of the direct and bold assertions, and often well-knit stories (though all false) of hostile accusers, and a care that we are not violently led away by our own abhorrence of the idea of fraud and deception in those we have trusted. Satisfied of guilt, punishment should be certain, and proportionately severe; but there should be still some risk to the accuser, some penalty for false accusation. The present law is defective in this respect; an accuser is no otherwise liable than for perjury, an offence most difficult of conviction.

48. I must state, too, my opinion, that too high power of punishment is given to the collectors, as magistrates, over their native servants. The collector is alike accuser and judge, and it is his own servant, in whom he has confided, that is at trial. He is a man of more dispassionate judgment than is very common to human nature, who is quite devoid of prejudice under such circumstances, either for or against the prisoner. It is perhaps to the credit of our functionaries, that the bias is found chiefly against, than for, the accused; but if it be bias, it operates against the judgment, whichever way it might be. It is my opinion that most of these cases should be sent for trial to the judge, the collector acting as prosecutor to the best extent of his power, in the object to search out and gain the truth to convict the guilty.

49. I made inquiries into the state of slavery, as respects the frequency of sales now existing. The subject was brought to my attention by some trials that had occurred before the session judge, and also by petitions from the Gosayes, and the Kusbins and Kunchunees, complaining of their customs being interfered with.

State of slavery.

50. Slavery exists here, as throughout India, and sales are made, but comparatively as with what was the case formerly, not to any great extent. In the last year, sales have been more frequent, but they were mostly occasioned by the late dearth, approaching to famine, in the eastern districts of the Deccan.

51. In the trial before the session judge, the punishment for sales made contrary to the Regulation have been severe, and I do not doubt the effect will be greatly to check, if not entirely to suppress the practice.

52. It is gratifying to find, at least, such was the result of my inquiries, that the importation of slaves by sea has nearly ceased, and that the sale of children which does take place, is chiefly that arising from a state bordering on famine.

53. I would wish to notice some alteration which I think might be introduced in the administration of criminal justice, and which, I think, may, for the most part, be effected by instructions under the present Regulations, without the necessity of passing any new enactment, which at the present moment it might be desirable to avoid, unless on emergency.

Assistants to the Judges at detached stations to have the high powers provided by the Regulations.

Also at Sudder station.

54. All assistant judges at detached stations, I think, should at once be vested with the power of punishing to the extent of seven years imprisonment, under the provisions of section , Regulation XIII. of 1827.

55. All assistants too, at the sudder station, who have been in the country seven years, or who may be reported peculiarly fit for the duty, should have similar powers. This would be a relief to the judge, and convenient at the times when the judge is absent on sessions at the detached stations.

56. In framing the session judge system, one of the principal objects in view was the more speedy trial of offenders with the least inconvenience to witnesses; the extension of the powers of assistants, as the system admits of, will do much to effect this end.

57. It would be an improvement, if the trials held by these assistants were referred for confirmation to the session judge, instead of the Sudder Foujdaree Adawlut; this, however, would require an alteration in the Regulation.

Commitments of the Assistant Magistrate in some cases should be first sent to the Magistrate for consideration.

58. I consider it essential, that the authority it is found all assistants to the magistrates have to commit offenders for trial should be restricted, by the commitments for some offences of a more complicated nature being first sent to the magistrates for confirmation. I found at Ahmednuggur a very young assistant charged with this important duty, acting, as far as the commitments were concerned, without control; that is, if he made a commitment, the magistrate could not interfere, as being a thing that had passed his authority or jurisdiction. I cannot better explain how I found this to work ill and wrongly, than by stating a case which occurred where some merchants were committed by the assistant magistrate for trial for forgery, where the act on which the charge was made, was, having signed a paper giving their opinion that some accounts were correct (decided afterwards to be false) which had been produced in a civil suit, and which had been referred to them, as a kind of jury, for their opinion. The native commissioner, that is, the judge of the case, was committed also on the same charge, for putting his signature to the paper. The trial of the merchants actually took place; they were acquitted, but they had suffered the ignominy, the disgrace and distress of mind of going through the trial. Again, I found a case where a man was brought from Nassuck, a distance of a hundred miles, who had been in prison for upwards of a month waiting trial, and yet, on a question coming before me respecting the case, I found that no penal offence had been committed, but that the affair related to a dispute forming a common subject of litigation in our civil courts.

59. In these and some other cases, the act of the assistant arose out of a wrong view of the Regulations; they supposed a penal offence, a breach of the Regulation, where, in fact, nothing of the kind had taken place; this power, therefore, in their hands, should be subject to control, and I think nothing more to this end is required, than that an instruction should be issued from the Sudder Adawlut to the magistrates, to desire that their assistants, in complicated, novel or doubtful cases, should, before committing an accused for trial, refer the case for the consideration of the magistrate; this will be a protection to the people against a wrong exercise of power, which in these instances they are exposed to, but the risk of which, by the course I have suggested, will be much obviated.

Complaints that persons are subjected to prosecution for perjury and forgery in the instance of parties cast in a civil action.

60. I found it a subject of complaint that persons were, after a civil action was disposed of, subjected to prosecution before the magistrate for perjury and forgery, at the instance of the party cast; some cases of this kind had occurred, and at Ahmednuggur the practice seems to have obtained to some extent. The remedy appears to me simple; that the law should provide that in these charges resulting from a civil action, the prosecutor should first apply to the court before which the trial had taken place; if it was perjury that was charged, the court could initiate proceedings; if forgery, that it should certify to the magistrate that it appeared there were grounds for the prosecution. A rule of this kind would greatly tend to stop these prosecutions, instituted in bad spirit, and yet be no impediment where the charge was on good foundation.

Magistrates to keep their own records in the English language, suggested.

61. I think it would be attended with great advantage, if the magistrates were required, as the session judges are, to keep a more perfect record in the English language of their proceedings in cases tried before them. The court have already required that the charge, finding and sentence, should be in English, as well as the native language; I did not find this to have been observed

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in any case that I had before me at Poonah; but, where observed, it is even insufficient; more is required; there should be remarks on each evidence to show its nature and extent, how bearing on the case, and how esteemed worthy of credit.

62. It appears to me that the Sudder Adawlut, charged with the due preservation of the administration of justice, can require this without any alteration of the present Regulations. I am certain it would be a great improvement; we find it so in the trials of the session judges. If done as the trial proceeds, it takes no time, and we then have no doubt that the magistrate is acquainted with the case, or if he is not, it appears nothing is slurred over; there is protection and security that nothing is dark; the charge is defined, the ground of conviction is recorded in the most intelligible way, the magistrate's own writing is in the book. Of the necessity of this protection, I need only beg the attention of the judges to the many cases we have had before the court; some I lately sent down from Poonah, where prisoners have been charged with one thing and found guilty of another, in respect of which they could have had no conception they were undergoing trial.

63. I can hardly conceive these things to occur; had the magistrate to record in his own language what was passing before him, and his opinion upon what was adduced, it would tend to a better understanding of the case under trial, and so to a greater perfection in this branch of criminal justice.

64. I beg to state that I commenced my circuit at Ahmednuggur on the 18th August, and at Poonah on the 15th September, and that I returned to Bombay on the 22d October. Dates of Commencing Circuits.

I have &c.

(signed) *G. W. Anderson,*
Judicial Commissioner.

Bombay, 29 November 1834.

(True copy.)
(signed) *P. W. Le Geyt,* Register.

Minute by the Right Honourable the Governor.

I concur generally in the opinion of the judges on Mr. Anderson's report on the formation of the Law Commission: a copy had probably be better sent to Calcutta with reference to the suggestions in paragraphs 10 and 44. I can hardly understand how there can be such a difference in the price of food supplied to the prisoners in the Poonah and Ahmednuggur gaols, as to account for the excess of charge in the former. The account of the new gaol at Ahmednuggur is very satisfactory, and the attention of the honourable Court may be called to it.

There are certainly strong reasons advanced by Mr. Anderson in the 47th and 48th paragraphs, in favour of the change he has suggested; but before Government shall issue any orders, as recommended by the judges, I should think it will be advisable to take the opinion of the Revenue Commissioner on the subject. There may be objections which do not at present strike me, if the collectors shall be ordered to be prosecutors.

The judges may be requested to convey to Mr. Anderson the acknowledgments of Government for the information contained in this, as well as in all the reports of his circuits.

15 December 1834. (signed) *Clare.*

From *L. R. Reid,* Esq., Secretary to the Government of Bombay, to the Suddur Dewanee and Sudder Foujdaree Adawlut; dated 6 January 1835.

Gentlemen,

I am directed by the Right honourable the Governor in Council to acknowledge the receipt of your register's letter of the 12th ultimo, with Mr. Anderson's circuit report of the zillahs of Ahmednuggur and Poonah, and to inform you that his Lordship in Council concurs generally in your opinion on that report, a copy of which will be sent to Calcutta on the formation of the Law Commission, with reference to Mr. Anderson's suggestion contained in the 10th and 44th paragraphs.

His Lordship in Council cannot understand how there can be such a difference

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in the price of the food supplied to the prisoners in the Poonah and Ahmednuggur gaols, as to account for the excess of charge in the former, noticed by Mr. Anderson.

The account of the new gaol at Ahmednuggur, as given in the 17th to 22d paragraphs of Mr. Anderson's report, is very satisfactory, and his Lordship in Council will call the attention of the honourable Court to it.

In the 47th and 48th paragraphs of his letter, Mr. Anderson has advanced strong reasons in favour of sending most of the cases against revenue servants to the judge for trial, the collector acting as prosecutor; but before issuing any order, as recommended by you, his Lordship in Council has deemed it advisable to make reference to the Revenue Commissioner on the subject, as there may be objections to the measure which do not at present occur to Government.

In reference to the 11th paragraph of your register's letter, I am directed to observe, that the assistant judge at Ahmednuggur and Dhulia have already had their power extended by the Government order of the 2d September 1834, and his Lordship in Council is pleased now to grant similar powers to the acting assistant session judges for the detached stations at Broach and Sholapore, and to the assistant session judge at Rutnagherry.

In regard to the assistant session judges at the sudder stations, I am directed by his Lordship in Council to request you will be pleased to name those gentlemen whom you would recommend being vested with extended powers.

In conclusion, his Lordship in Council requests you will convey to Mr. Anderson the acknowledgments of Government for the information contained in his present, as well as in all the reports of his circuit.

I have, &c.

(signed) *L. R. Reid,*
Secretary to Government.

Bombay Castle, 6 January 1835.

From *L. R. Reid,* Esq., Secretary to the Government of Bombay, to the Revenue Commissioner; dated 6 January 1835.

Sir,

In transmitting to you the accompanying extract (paras. 43 to 48) of a report from the Judicial Commissioner for the Deccan and Khandeish, dated the 29th of November last, I am directed by the Right honourable the Governor in Council to request your opinion on Mr. Anderson's suggestion for sending the cases therein alluded to, to the judges for trial, the collectors acting as prosecutors.

I have, &c.

(signed) *L. R. Reid,*
Secretary to Government.

Bombay Castle, 6 January 1835.

From *L. R. Reid,* Esq., Secretary to Government of Bombay, to the Acting Assistant Session Judge at Broach; dated 6 January 1835.

Sir,

I am directed to inform you that the Right honourable the Governor in Council is pleased to empower you, under clause 4 and 5, section 13, Regulation XIII. of 1827, to decide all cases not involving more than seven years' imprisonment.

I have, &c.

(signed) *L. R. Reid,*
Secretary to Government.

Bombay Castle, 6 January 1835.

From *L. R. Reid,* Esq., Secretary to Government of Bombay, to the Session Judge at Surat; dated 6 January 1835.

Sir,

I am directed by the Right honourable the Governor in Council, to transmit to you, to be forwarded as addressed, the accompanying letter to your acting assistant, Mr.

Mr. Richardson, at the detached station of Broach, empowering him, under clause 4 & 5, section 13, Regulation XIII. of 1827, to decide all cases not involving more than seven years' imprisonment.

I have, &c.
(signed) *L. R. Reid,*
Bombay Castle, 6 January 1835. Secretary to Government.

From *L. R. Reid,* Esq., Secretary to Government of Bombay, to the Session Judge of the Conkan; dated 6 January 1835.

Sir,

I AM directed by the Right honourable the Governor in Council to transmit to you, to be forwarded as addressed, the accompanying letter to Mr. J. A. Shaw, your assistant at the detached station of Rutnagherry, empowering him, under clause 4 & 5, section 13, Regulation XIII. of 1827, to decide all cases not involving more than seven years' imprisonment.

I have, &c.
(signed) *L. R, Reid,*
Bombay Castle, 6 January 1835. Secretary to Government

From the Government of Bombay to the Honourable Court; dated 7 January 1835.

Honourable Sirs,

WE have the honour to transmit to your honourable Court a letter from the register to the Sudder Adawlut, with the report from the Judicial Commissioner for the Deccan and Kandeish, of his circuit last year through the zillahs of Poonah and Ahmednuggur, which your honourable Court will find contain important observations on the working of the judicial system in the districts within his range.

The account which Mr. Anderson gives in the 17th to 22d paragraphs, of the new gaol at Ahmednuggur, is very satisfactory, and we beg to call the attention of your honourable Court to it.

We have the honour to transmit copy of the Minute recorded by our Right honourable President, on Mr. Anderson's report, and to be,

Honourable Sirs,
(signed) *Clare.*
J. Keane.
Bombay Castle, 7 January 1835. *J. Sutherland.*
E. Ironside.

(True copies.)
(signed) *C. Norris,* Chief Secretary.

(No. 45.)

From *W. H. M'Naghten,* Esq., Secretary to Government of India, to *Frederick Millett,* Esq., Secretary to the Indian Law Commissioners; dated 20 April 1835.

Sir,

I AM directed by the Governor-general of India in Council, at the suggestion of the Bombay Government, to forward to you the accompanying copy of a report from Mr. Anderson, late Judicial Visiting Commissioner for the Deccan, dated the 29th November last, as containing matter in paragraphs 10 and 44 for the consideration of the Indian Law Commissioners.

Jud. Crim. Cons. 20 April 1835. No. 9.

I am, &c.
(signed) *W. H. M'Naghten,*
Council Chamber, 20 April 1835. Secretary to the Government.

Jud. Crim. Cons. 22 June 1835. No. 1.

(No. 1185 of 1835.)

From *Charles Norris*, Esq., Chief Secretary to Government, Bombay, to the Secretary to the Government of India; dated 30 May 1835.

Jud. Dep.

Sir,

As connected with the subject of my letter of the 10th March last, I am directed by the Right honourable the Governor in Council to transmit to you the accompanying copy of a letter from the Revenue Commissioner, dated the 9th instant, containing his opinion on the question of certain cases of peculation by native revenue officers being sent for trial before the judges, as proposed by Mr. Anderson, late Judicial Commissioner for the Deccan, and to signify to you, for the information of the Government of India, that, for the reasons stated by Mr. Williamson, this Government does not at present contemplate the introduction of any change in the Regulations in force on that subject.

I have, &c.
(signed) *C. Norris*,
Chief Secretary.

Bombay Castle, 30 May 1835.

(No. 723 of 1835.—Judicial Department.)

From *T. Williamson*, Esq, Revenue Commissioner, to *Charles Norris*, Esq., Chief Secretary to Government, Bombay; dated 9 May 1835.

Sir,

Jud. Crim. Cons. 22 June 1835. No. 2. Enclosure.

I HAVE the honour to acknowledge the receipt of Mr. Secretary Reid's letter, dated the 6th January last, transmitting an extract of a report from the Judicial Commissioner for the Deccan and Kandeish, and requesting my opinion on Mr. Anderson's suggestion for sending cases of peculation by native revenue officers to the judges for trial.

2. Mr. Anderson's immediate attention to this question appears to have been roused by seeing the prisoners confined for revenue offences under sentences of the zillah magistrate, grouped together in the gaol. The impression was natural, and though the scene was some indication of the extensive corruption which has prevailed among our native officers in the Deccan, the Right honourable the Governor in Council may safely feel assured it was no proof of injustice or undue rigour in the administration of the law.

3. Although not aware of the number of prisoners in the gaol when the Commissioner visited it, still I apprehend it would not appear so great, contrasted with the whole native establishment of the Poonah zillah, which, including hereditary servants, cannot amount to less than 3,000 individuals.

4. The urgent necessity for a tribunal competent to investigate and punish promptly on the spot the constantly occurring cases of fraud, embezzlement and oppression committed by the native revenue officers, no doubt forcibly presented itself to Government when such a tribunal was instituted under section 11, Regulation XVI. of 1827, and the numerous frauds and abuses which of late years have been discovered in the provinces, by which the revenue has suffered so severely, and the ryots have been so grievously oppressed, joined to the satisfactory manner in which they have been exposed and checked, must have afforded Government confirmatory evidence of the utility and wisdom of that enactment.

5. I respectfully contend that no officer is completely qualified to judge of this vital question who has not a thorough practical knowledge of the duties confided to the native servants in the revenue department, and of the numberless opportunities they have, not only of committing, but of concealing offences. Mr. Elphinstone was well aware of this, and the Regulation in question was passed by this Government.

6. I would now beg to point out to the Right honourable the Governor in Council the serious inconvenience which will be sustained by the ryots if they are forced to proceed to the hoozoor to give evidence before the judge in every case of fraud, on the part, we shall say, of the village accountants, of whom there are several hundreds in every zillah. In the Nuggur district, for instance, were the Judicial Commissioners' suggestions adopted, and a cooleurnee in the Trimback purgunnah (Nassick division) to defraud the cultivator or Government, perhaps half of the inhabitants of the village would have to travel nearly 250 miles

miles (backwards and forwards) in often the busiest season of the year, to the manifest injury of the public revenue, for the purpose of giving their evidence. They are now, when put to comparatively speaking trifling inconvenience, very averse to come forward. How much more so, then, would they be disposed to put up with oppression were they to perceive that the inevitable result of their giving evidence would be a wearisome journey and protracted sojourn, at a distance from their families and their fields, in an expensive city.

7. The difficulty, delay and expense the ryots encounter in attending distant stations, constitute, I verily believe, the very worst feature of our civil administration; not, however, often forcing itself on our observation, we do not sympathize so much as we otherwise would do in the sufferings it exposes the people to.

8. In territorial extent and population, our Deccan zillahs are little kingdoms. The judges have now their time fully occupied. Had they, in addition to their present duties, to try the case in question, which in our immense revenue establishments are of frequent occurrence, we might, in fair reason, dread a repetition of those arrears of civil business, which in former times amounted on the other side of India to almost a denial of justice.

9. Averse, however, as I am, for the above reasons, that the collector and his experienced assistants should be debarred from passing sentence in cases of malversation, &c., on the part of members of his establishment, still I would not allow such considerations to have any weight with me did I conceive the accused had not as fair a chance of receiving justice when on their trial in our cutcherries as they would in the Adawlut; but with all due deference to the opinion of the Judicial Commissioner, I think that the judgment of the collectors is fully as unlikely to err in cases so intimately connected with the revenue management as is the discernment of the judge. According, moreover, to the provisions of Regulation IV., clause 2, section 2, of 1831, the assistant's sentence cannot be carried into effect till confirmed by the collector, who is himself liable to have his decision called for and amended by the session judge, or mitigated or annulled by the Suddur Foujdaree Adawlut.

Sec. 7, Clause 3, of Regulation VIII. of 1831.
Sec. 29, Clause 4, Regulation XIII. of 1827.

10. I would here beg to state, that although I fully concur with Mr. Anderson in thinking that it is easy to make up charges, still I conceive that it is much more difficult to substantiate such charges before the collector or assistant, who is on the spot, and has better opportunities of becoming acquainted with the characters of the accuser or witnesses, than it would were the evidence taken in a formal manner and at a later period before the judge in his court.

11. Common as the saying (quoted by the Judicial Commissioners) is, that "no honest man can with safety serve the Government," I am happy to be able to state that several natives, who I believe to be perfectly honest, have long, and are still, serving the Government in the revenue line, not only with benefit to Government, but with honour, credit and advantage to themselves. There are, doubtless, some honest, but timorous natives, who speak what they think in giving utterance to the above saying, which is, however, I apprehend, oftener to be heard among men conscious of guilt, or convicted peculators, than among respectable and intelligent natives.

12. With reference to the observations made by the Judicial Commissioner in the 47th paragraph of the extract under consideration, "But there should be still some risk to the accuser, some penalty for false accusation. The present law is defective in this respect. An accuser is no otherwise liable than for perjury, an offence most difficult of conviction." I would beg to refer his Excellency in Council to Regulation XVII. of 1828, under the provisions of which persons bringing false charges are liable to be punished.

13. In the 48th paragraph, the Judicial Commissioner states his opinion, that "too high power of punishment is given to the collectors and magistrates over their native servants." I would, however, submit, that one of two consequences must arise from the power of the collector being diminished, say, for instance, to that which he enjoys in common police cases. Either delinquents would be frequently punished far less severely than they merited, or the ryots must be exposed much more than they are at present to the cruel inconveniences attending long journies, and therefore be as prone to withhold their evidence, as if the collector had no power at all of punishing the offenders.

One year's imprisonment.

14. I would further beg to observe, that the time of the collector would be still more occupied than at present in inquiring into cases of fraud, if he is compelled

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to commit the prisoner, whom he may consider guilty, for trial. He would have to labour just as hard as were he himself to pass sentence, in collecting and taking down the evidence, and the delay this would cause would be sedulously employed by the prisoner and his friends in those intrigues which in India are so liable to defeat the ends of justice. After the collector handed up a case to the Adawlut, he would, according to the Judicial Commissioner's plan, have either in his own person, or that of the assistant, to act as prosecutor. I need not say what a serious obstruction this would prove to the discharge of their other multifarious and important duties.

15. It is true that the collector could employ a vakeel to conduct the prosecution; but then the difficulty would be for the collectors to find a vakeel who would, under the strong temptations to which he must be exposed, remain honest in the discharge of his invidious duties.

16. In conclusion, I beg respectfully to state, that I earnestly trust that the Regulations by which collectors and assistants are empowered to punish offenders in their own establishments will not be repealed. The people would, in my humble opinion, lose by its abrogation the most effectual protection our law has yet given them against unjust exactions and oppression.

I have, &c.
(signed) *T. Williamson,*
Revenue Commissioner.

Rutnagherry, Revenue Commissioner's Office,
9 May 1835.

(No. 140.)

From *W. H. M'Naghten,* Esq., Secretary to the Government of India, to *F. Millett,* Esq., Secretary to the Indian Law Commissioners; dated 22 June 1835.

Sir,

Jud. Crim. Cons. 22 June 1835. No. 3.

I AM directed by the honourable the Governor-general of India in Council, to forward to you, for submission to the Indian Law Commissioners, the accompanying copy of a letter, No. 1185, dated the 30th ultimo, with its enclosures, from the Chief Secretary to the Government of Bombay, in continuation of my address of the 20th April last, No. 45.

I have, &c.
(signed) *W. H. M'Naghten,* Secretary.

Council Chamber, 22 June 1835.

(No. 2618 of 1838.—Judicial Department.)

From *J. P. Willoughby,* Esq., Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India in the Legislative Department; dated 6 December 1838.

Sir,

Leg. Cons. dated 25 Feb. 1839. No. 1.

I AM directed to transmit the accompanying extracts from the proceedings of this Government, and to communicate the following observations on the several subjects to which they refer, for the consideration of the honourable the President in Council.

2. The honourable the Court of Directors, in the 25th paragraph of a despatch dated the 26th of February 1836, No. 2, directed that measures might be adopted for bringing the exceptionable state of the law of treason in the Bombay code, under the consideration of the Indian Law Commission.

3. This subject had been brought to the notice of the Sudder Foujdarree Adawlut on the 24th of February 1834, with reference to the 14th, 15th and 16th paragraphs of a despatch from the honourable Court, dated the 12th June 1833, and they reported that they had issued a circular, under date the 22d September 1831, by which trials on charges of treason had been much limited. They also suggested,

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suggested, that it might be much desirable, instead of making an immediate alteration in the law, to defer doing so until the appointment of the Indian Law Commission, when it might be brought to their notice. Government concurred in this opinion, and the further consideration of this measure was deferred accordingly.

4. On the receipt of the honourable Court's despatch referred to, of the 26th of February 1836, the attention of the judges was again called to the subject, and they state it to be their opinion, that no modification of the law, further than is embraced in the declaratory circular quoted, is necessary; the objections to the particular points under reference being thereby obviated in practice, as they will be expressly by law, by the omission of the words "or for the purpose of open depredation," in section 12, clause 1, Regulation XIV. of 1827.

5. As, however, the honourable Court have requested that the question may be brought under the consideration of the Law Commission, I am instructed by the honourable the Governor in Council to refer you to the proceedings specified in the margin, in view to their being submitted to his honour in Council, in obedience to the orders alluded to.

Extract paras. 14, 15 and 16 of a despatch from the honourable Court, dated 12 June 1833, No. 5.
Extract para. 25 of a despatch, dated 26 Feb. 1836, No. 2.
Letter to the Sudder Adawlut, of 24 Feb. 1834, No. 537.
Reply dated 22 Aug. 1834, No. 213.
Para. 2 of a Letter to the Judges of the Sudder Foujdarree Adawlut, dated 2d, and of the Reply, dated 18th of May 1837.

6. In the 57th paragraph of his report, dated the 29th November 1834, the Judicial Commissioner for the Deccan and Kandeish suggested that it would be an improvement if the trials held by assistant judges were referred for confirmation to the session judges instead of to the Sudder Adawlut, but he stated that an alteration of the law would be requisite for carrying it into effect.

7. The judges of the Sudder Adawlut, in the 11th paragraph of their register's letter of the 12th of December 1834, No. 330, handing up Mr. Anderson's report to Government, recommended that the proposed alteration should be made. This report was forwarded to the Government of India with the chief secretary's letter of the 10th of March 1835, No. 536, in view to the several suggestions it contained being brought under the consideration of the Law Commission.

8. On the receipt of the honourable Court's despatch of February 1836, the attention of the judges of the Sudder Adawlut was again called to Mr. Anderson's proposition; and they have prepared the draft of an Act for giving effect to the measure, copy of which is herewith forwarded for submission to the Government of India.

2.

9. Adverting to the 60th paragraph of Mr. Anderson's report, relative to prosecutions for forgery, I am instructed to observe, that the judges of the Sudder Adawlut do not recommend the alteration in the law proposed by that gentleman to prevent prosecutions for that offence.

10. The honourable Court, in the 37th to the 41st paragraphs of the despatch of the 26th of February 1836, noticing Mr. Anderson's observations regarding the corruption imputed to native revenue servants, remark that they think that in petty cases it may be necessary in practice, and may be free from any material objection, that the collector and magistrate should exercise jurisdiction over his native servants, although himself their accuser, but that it is not fit nor safe, that, under such circumstances, he should be empowered to inflict severe punishment. The honourable Court desire, therefore, that the provisions of the Regulations in this respect may be altered, and that in the interim, according to Mr. Anderson's suggestion, all serious charges against the collectors' native servants may be sent by them for trial before the judge.

11. The attention of the Revenue Commissioner having been drawn to these suggestions, that officer's opinion, and the views of Government, were communicated to the Government of India, with the chief secretary's letter, dated the 30th May 1835, No. 1185, with reference to the previous letter of the 10th March 1835, No. 536, forwarding Mr. Anderson's circuit report alluded to.

12. In obedience however to the honourable Court's instructions, the subject was again referred to the Revenue Commissioner, and also to the judges of the Sudder Adawlut. The sentiments of these authorities on this question are stated in the correspondence quoted in the margin.

From the Revenue Commissioner, dated 8 May 1837, No. 772.
From the Sudder Adawlut, dated 8 May 1838, No. 162, para. 4.

13. The Revenue Commissioner still adheres to the opinion expressed in his previous letter of the 9th May 1835, No. 723. The judges consider that no alteration in the law is necessary, but that it will be sufficient to issue instructions to the several collectors and magistrates, under the authority of Government, directing them to send for trial before the session courts all cases of delinquency by revenue servants, where the extent of their own ordinary jurisdiction may be considered inadequate to the due punishment of the offence charged. The judges otherwise think the object in view might be obtained by rescinding clause 4,

section 11, and clause 3, section 27, Regulation XVI. of 1827, and section 2, Regulation IV. of 1831. It will, however, be perceived from the papers referred to in the margin, that the judges differ in opinion in respect to the transfer of these trials. This subject has been again referred to by the honourable Court, in the despatch of 16th May last, and they direct attention to the instructions in paragraph 41 of their despatch of the 26th February, above alluded to.

Extracts paras. 5 to 10, of a Minute by the acting senior Puisne Judge; and paras. 2 to 5, of a Minute by the acting third Puisne Judge.

14. The honourable Court, adverting to the suggestion in the 61st, 62d and 63d paragraphs of Mr. Anderson's report, that the magistrates should be required to keep a more perfect record in the English language of cases tried before them, direct that if it has not been adopted, no delay may occur in carrying it into effect.

15. On this subject the judges report, that a very great improvement has taken place since the period of Mr. Anderson's circuit. They also remark, that in many cases which came before the Judicial Commissioner in revenue, that gentleman stated that the proceedings were as detailed as could be possibly required; but this not being always the case, the judges recommend that this rule may be invariably observed. As it appears that the management can be carried into effect under the sanction of Government, without any alteration of the law, the judges of the Sudder Adawlut have been authorized to issue the requisite instructions for that purpose.

16. In forwarding the annexed extracts from the honourable the Court's despatches, and the proceedings of this Government upon the several propositions in Mr. Anderson's report, I am instructed to request that his honour in Council will be pleased to bring the subject under the consideration of the Law Commission, in conformity with the honourable Court's orders, contained in their despatch of the 26th of February 1836.

I have, &c.

(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle, 6 December 1838.

EXTRACT from the Proceedings of Government in the Judicial Department.

EXTRACT of a Despatch from the Honourable the Court of Directors, dated 12 June 1833.

(No. 5.)

Legis. Cons. 25 Feb. 1839. No. 2.

Para. 14. IN cap. 1, sect. 12, Regulation XIV., of 1827, treason is defined as follows: "Any person subject to the criminal jurisdiction established by Regulation II., A. D. 1827, sect. 1 and 3, who shall raise or employ armed men for the purpose of making war against any of the British Governments of India or adjacent countries, or for the purpose of open depredation, or who shall join men so raised or employed, or shall attempt the fidelity of the troops of any of the said Governments, or shall assist its foreign enemies or rebels, or who shall be guilty of any act for the subversion of any of the said Governments or the forcible dismemberment of its territory, shall be liable to the punishment of treason;" and the next clause in the Regulation is, that the punishment of treason shall be death, and confiscation of property. By Regulation XIV. of 1827, sect. 1, cap. 5, persons who instigate or aid in penal acts, are punishable as principals.

15. It is highly objectionable to class together acts of so very different degrees of criminality, calling them all treason; and we desire that the enactment defining treason be revised, and that all offences which are not strictly political, and of a heinous nature, be distinctly excluded from it.

16. When the process against treason, and the penalties annexed to that crime are confined, as they ought to be, to offences strictly political, the special duty of holding state trials, which is attached to the office of Visiting Commissioner, will be of very rare occurrence.

EXTRACT

(No. 2.)

EXTRACT of a Despatch from the Honourable the Court of Directors; dated 26 February 1836.

Para. 25. WE presume, that in pursuance of the resolution here communicated to us, you will have lost no time in taking the necessary measures for bringing the exceptionable state of the law of treason in your code, as pointed out in our despatches to you, under the consideration of the Law Commission; should this have been neglected, we desire that it may be done without further delay, and that the result may be reported to us.

Law of treason; defer making any alteration until the meeting of the Law Commissioners.

From *John Bax*, Esq., Secretary to Government of Bombay, to the Judges of the Sudder Dewanny and Sudder Foujdarree Adawlut; dated 24 February 1834.

Gentlemen,

I AM directed by the Right honourable the Governor in Council, to transmit to you the accompanying extract of a letter from the honourable the Court of Directors, No. 5, of the 12th of June last, and to request that you will submit a draft of a Regulation to give effect to the honourable Court's injunctions in regard to the particular duties required of the Judicial Commissioners.

Paras. 13 to 18, 28 to 30.

The honourable Court's remarks on the law of treason, as contained in paragraphs 14 to 16, are transmitted to you, as connected with other matters relative to the criminal branch of our laws already under reference to you, in consequence of a former despatch from the honourable Court.

His Lordship in Council requests you will submit the draft of a Regulation to give effect to the honourable Court's instructions, conveyed in paragraph 17; at the same time his Lordship in Council thinks it would be an improvement, to provide for the attendance of a full court on occasions of great moment, touching cases of intricacy, or the establishment of precedent, or other good cause, when it might appear to be necessary to a sitting judge concurring with a former.

His Lordship in Council further desires, that the mode of reporting the individual business done by the judges, as ordered in the 18th para., shall have retrospective effect from the 1st day of January 1833, as the reports of business for the past year have not yet been prepared.

His Lordship in Council further desires, that measures may be immediately taken for obtaining the translations of two decrees passed by each of the six native judges, and each of the thirteen principal native commissioners, as directed in the 30th paragraph.

In obedience to the orders of the honourable Court, his Lordship in Council is pleased to fix the peon establishment of the Sudder Adawlut at the following scale, from the 1st of April:—

		Rupees.
For the Judges,	10 chobdars, at 12 rupees each	120
	20 peons, at 7 rupees each	140
For the Court,	1 jemadar, at 12 rupees	12
	12 peons, at 7 rupees each	84
	2 hurkarras, at 7 rupees each	14
	Per Month	370

I have, &c.

(signed) *John Bax*,

Secretary to Government.

Bombay Castle, 24 February 1834.

From the Register of the Sudder Foujdarree Adawlut; dated 22 August 1834.

Sir,

I AM directed by the judges of the Sudder Foujdarree Adawlut, with reference to paragraphs 14, 15 and 16 of the extract from the honourable Court's despatch of the 12th of June 1833, forwarded with Mr. Secretary Bax's letter, No. 537, on the 24th of February last, to state, for the information of the Right honourable the Governor in Council, that a circular order was issued by the Sudder Foujdarree Adawlut, on the 22d September 1831, by which the trials on charges of treason have become much limited; and they would therefore beg to suggest to his Lordship in Council, that it might be desirable, instead of making any immediate alteration

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alteration in the present law, to suspend doing so until it is determined whether the Law Commission be appointed, when, if it should be desirable, limits of, and alterations, as far as respects the present code, may be pointed out to that body.

In reference to the 30th paragraph of the same despatch, I am instructed to state, that the translations therein ordered have been called for, and when received will be transmitted.

I have, &c.
(signed *P. W. Le Geyt*,
Register.

Bombay, Sudder Foujdarree Adawlut,
22 August 1834.

EXTRACT of a Letter to the Judges of the Sudder Adawlut; dated 2 May 1837.

Para. 2. WITH reference to Mr. Secretary Wathen's letter, dated the 4th of September 1834, No. 1952, I am instructed to request that you will be pleased to submit to Government, as soon as possible, the information alluded to in the 1st paragraph of your register's letter, dated the 22d of August 1834, regarding the law of treason, in order that the proceedings on the subject may be transmitted for the consideration of the Indian Law Commission.

EXTRACT of a Letter from the Acting Register to the Sudder Foujdarree Adawlut; dated 18 May 1837.

(No. 189.)

Para. 2. IN reply, I am directed to state, with reference to the second paragraph of your letter, that further modification of the law of treason than is embraced in the declaratory circular of the court, under date the 22d September 1831 (copy of which is annexed), does not appear to the judges to be necessary, as the objection to the particular points under reference is thereby obviated in practice, and will be expressly so by law, by the omission in clause 1, section 12, Regulation XIV. of 1827, of the words "or for the purpose of open depredation"

CIRCULAR.

(No. 784 of 1831.)

From *R. T. Webb*, Esq., Acting Register of Bombay, to the Magistrates of the several Zillahs; dated 22 September 1831.

Sir,

IT having been brought to the notice of the court that the provisions in the 3d chapter of Regulation XIV., A.D. 1827, for trial of treason, have been applied to cases which the spirit of law as well as convenience requires should be tried by the ordinary course of criminal judicature, your attention is requested to the following distinctions:—

Section 12 of the above quoted Regulation contains the term "open depredation," among the definitions of treason. Section 36 defines "robbery," and in a way which completely includes any thing that can be called depredation, whether open or otherwise; there is, therefore, no occasion for a magistrate to resort to the more tedious and inconvenient method of charging a depredator with treason, unless the offence bear a political aspect.

The above quoted section 12 includes, in its definition of treason, "raising or employing armed men for purposes of depredation;" this offence is also included in the terms "instigating or aiding," in clause 5, section 1, and consequently comes equally within the above distinction, and therefore only those should be considered treasons, and committed for trial as such, which are either directly or indirectly in opposition to Government.

I have, &c.
(signed) *R. T. Webb*,
Acting Register.

Bombay Sudder Foujdarree Adawlut,
22 September 1831.

EXTRACT

(No. 2.)

EXTRACT of a Letter from the Honourable the Court of Directors; dated 26 February 1836.

Circuit Reports by Mr. Anderson in 1834, for the zillahs of Poonah and Ahmednuggur, transmitted.

Para. 37. WE have read with much interest Mr. Anderson's excellent report upon his circuit in the zillahs of Ahmednuggur and Poonah in 1834, and are anxious to learn in what manner various important suggestions offered in that document have been acted upon.

38. The following is an extract from the report, in which Mr. Anderson confirms Mr. Henderson's representation of the great want of reform in the system of revenue administration above noticed:—

"I regret to report that I found many delinquents in the gaols of the two zillahs, native servants, chiefly of the Revenue Department, found guilty of peculation. It is beyond doubt that corruption has prevailed to a dreadful extent amongst the revenue servants of the Deccan. This corruption is, I believe, to be attributed in these districts much to the system that has prevailed of granting extensive remissions in the revenue, a system which leagues the cultivator with the public officer in one interest, to deceive and defraud the Government. The attention of the European authorities has of late been greatly applied to check the evil, and this, with the greater facilities afforded by some late regulations, though something is still wanting in this respect, has been attended with considerable effect."

39. Mr. Anderson's observations regarding the corruption so generally imputed (we fear with too much truth) to native servants, are extremely judicious and discriminating, and ought to serve as a rule for the guidance of officers exercising authority over them.

"Still, perhaps," he says "there is no part of our management more difficult than this, of dealing with charges against our native officers. We find them corrupt; experience testifies that this turpitude, this spirit of peculation is fearfully prevalent amongst them; our confidence in their uprightness is continually betrayed, and yet it is certain that there is nothing so easy as to make up charges against them. So easy, that it is common to say that no honest man can with safety serve the Government. Of this we may be sure, that the authority who turns a greedy ear to receive these charges, will have his time occupied in little else. Amongst many unfounded charges he will find some true, but there will be a constant suspicion, I need not say how destructive to the good working of his establishment, how fatal to the due performance of his other duties

"The native officers require from us protection, not favour; a dispassionate consideration of circumstances of evidence, a weighing of probabilities by which to judge of the direct and bold assertions, and often well-knit stories, *who all false* of hostile accusers, and a care that we are not violently led away by our own abhorrence of the idea of fraud and deception in those we have trusted. Satisfied of guilt, punishment should be certain and proportionately severe. But there should be still some risk to the accuser, some penalty for false accusation. The present law is defective, in this respect, an accuser is no otherwise liable than for perjury, an offence most difficult of conviction." *Orig.*

40. We have been much struck with the force of the following remarks:—

"I must state too, my opinion, that too high power of punishment is given to the collectors as magistrates, over their native servants. The collector is alike accuser and judge, and it is his own servant, in whom he has confided, that is at trial. He is a man of more dispassionate judgment than is very common to human nature, who is quite devoid of prejudice under such circumstances, either for or against the prisoner. It is, perhaps, to the credit of our functionaries that the bias is found chiefly against, than for the accused; but if it be bias, it operates against the judgment, whichever way, it may be. It is my opinion, that most of these cases should be sent for trial to the judge, the collector acting as prosecutor to the best extent of his power, in the object to search out and gain the truth to convict the guilty."

41. In petty cases it may be necessary in practice, and may be free from any material objection, that the collector and magistrate should exercise jurisdiction over his native servants, although himself their accuser, but it is not fit nor safe that, under such circumstances, he should be empowered to inflict severe punishment. We desire that the provisions of your Regulations in this respect may be altered,

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altered, and in the mean time, that, according to Mr. Anderson's suggestion, all serious charges against the collector's native servants may be sent by him for trial before the judge.

From the Revenue Commissioner; dated 8 May 1837.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 2d instant, transmitting to me an extract (paras. 37 to 41) of a despatch from the honourable the Court of Directors, dated the 26th February 1836, and requesting me to favour Government with my opinion regarding the honourable Court's orders, that all serious charges against the native servants of the collectors may for the present be sent for trial before the zillah judges.

2. Most serious cases are now, I believe, tried by the judges, and it is my own humble opinion, that neither the law nor the practice should be materially altered, for the reasons I ventured to state at length in my letter dated 9th May 1835.

3. Were the law and practice so altered as to transfer the bulk of these cases to the Adawlut, I conceive one of two effects would infallibly ensue. Either thousands of poor cultivators would be dragged from their field and their homes to attend as prosecutors, witnesses, &c., to places generally at a great distance, often 100 miles and upwards from their places of residence, and there be detained, sometimes for long periods, to the serious loss of their property, and the injury of the public revenue (this kind of detention is universally complained of as one of the heaviest evils of our Government), or the prospect of being exposed to such hardship would prevent the people complaining at all, and thus tend to encourage the oppression and corruption which has been so fearfully prevalent in these districts, but which the law, as it now stands, has of late years done much to correct.

I have, &c.
(signed) *T. Williamson*,
Revenue Commissioner.

Poonah, R. C. O., 8 May 1837.

From the Assistant Register of the Sudder Adawlut; dated 8 May 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 141, of 1838, dated the 15th January, in reply to Mr. Register Webb's letter, dated the 18th May last, No. 189, with its enclosure, having reference to the despatch from the honourable the Court of Directors, dated the 26th of February 1836, No. 2, previously transmitted for the Court's report.

2. The judges of the Sudder Adawlut regret to state that they can find nothing on record of the nature alluded to in Mr. Register Webb's letter above quoted in the 3d para., as being under consideration, the correspondence which has passed with the Indian Law Commission having reference to the extent of penal jurisdiction which may be entrusted with safety to natives in general, rather than in allusion to the vesting our present native judges with criminal powers. Under these circumstances, the court will give the subject its early and mature deliberation, and make their report; but the judges have not considered it necessary to delay a reply on the other points of your reference, until they have had the opportunity of appreciating the merits of that, as yet, undiscussed question.

3. The next important suggestion broached by Mr. Anderson in his circuit report of 1834, on which the honourable Court require information, is, that the law be altered, so that certain sentences by assistant session judges may be confirmed by the session judges, instead of, as at present, by the court of Sudder Foujdaree Adawlut. A draft of an Act to that effect accompanies this despatch.

4. In respect to transferring the trial of native revenue officers in the more serious cases of malversation to the judicial authorities, it does not appear to the judges that any alteration in the law is required; it is enough, as suggested by Mr. Anderson and approved of by the Sudder Adawlut, that instructions should be issued to the collectors and magistrates, under the authority of the Right honourable the Governor in Council, directing them to send to the session courts for trial

trial all cases of delinquency by revenue servants, where the extent of their own ordinary jurisdiction is considered inadequate to the due punishment of the offence charged; otherwise, the object in view may be obtained by rescinding clause 4, section 11, and clause 3, section 27, of Regulation XVI. of 1827, and section 2, of Regulation IV. of 1831.

5. The transfer of the above trials having given occasion of discussion, and some difference of opinion, I am directed to transmit extracts (being paras. 5 to 10 inclusive) of a minute by the acting senior Puisne Judge, and paras. 2 to 5 inclusive of a minute by the acting third Puisne Judge.

6. In respect to other important suggestions by Mr. Anderson, upon which the honourable Court desire information in the 37th paragraph of their despatch of the 26th February 1836, the register's letter to the chief secretary to Government, dated 12th December 1834, No. 330, details the proceedings of the Sudder Adawlut upon several, in regard to the alteration proposed to the Sunwar palace. The convicts have been altogether removed from it to the Panopticon. The report for 1837 of the Judicial Commissioner, shows that the expense of convicts at Poonah and Ahmednuggur is nearly equalised, and much reduced. From what is stated by Mr. Anderson, all the assistants to the judges in the zillah of Poonah and Ahmednuggur have the fullest powers authorized by the Regulation, both in criminal and civil trials.

7. The question of pardons being granted to accomplices has been recently the subject of a correspondence between the Government of India, the Governor in Council of Bombay, and the Court of Sudder Foujdaree Adawlut. The judges quite concur in Mr. Anderson's opinion (para. 44), that a modification of the law as to the evidence of approvers is most desirable; nor would they restrict it to the cases of Thuggee; but it appears to them that such alteration should be in clause 1, and not clause 2 of section 35, of Regulation XII. of 1827, as proposed in the register's letter to the Government, of the 12th December 1834, para. 9, inasmuch as, for the reasons assigned by Mr. Anderson, the judges would permit conditional pardons where the individual's evidence may be indispensable, and would not compel a court of justice to place implicit confidence in the evidence of an accomplice unless corroborated.

8. In regard to the employment of junior assistants in magisterial cases, the judges beg to remind the Right honourable the Governor in Council that a circular was issued on the 22d September 1831, to the magistrates, that no assistant under two years' standing should be employed otherwise than ministerially in preparing cases for the eventual disposal of the magistrate; the provisions of this order were greatly modified by instructions from Government, so that, under date the 2d October 1832, the magistrates were authorized to employ such assistants, when competent, as they might think best for the public service.

9. The judges are not aware of any other measure having been taken on the subject of junior assistants to magistrates committing or discharging prisoners. They quite agree with Mr. Anderson, that neither the one nor the other should occur without the sanction of the magistrate, or, unless the Sudder Foujdaree Adawlut have previously consented to an exception in favour of any individual assistant, such operating thenceforward, although the assistant may be removed to another zillah. This is recommended by the judges upon principle, and not from any impression that either commitments or discharge now takes place unwarranted by the particulars of the case under investigation; in Khandeish, specially, the magistrate has been in the habit of examining all cases committed for trial before the sessions courts by any of his assistants. Confining their remarks to Khandeish and the Deccan, and especially the latter, the judges believe very few trials by assistant magistrates are not subjected to repeated reviews by the magistrate, the session judge, the Judicial Commissioner, or the Sudder Foujdaree Adawlut, and in general by more than one of these authorities. The judges are not of opinion that any alteration in the Regulation is necessary. A magistrate, without such, can surely restrict his assistants, under the authority of Government, in the use of any of the powers the Regulations permit his exercising.

10. The judges are not prepared to recommend the alteration in the law proposed by Mr. Anderson, in his 60th paragraph, to prevent prosecutions for forgery or perjury; nor, if they considered an amendment required, would they follow the course suggested. If the perjury complained of occurred before the judge, a certificate from him would go far to show that he considered the party guilty; the said party being subsequently brought up before himself for trial on the point at issue,

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an objection which has not escaped Mr. Anderson's notice, when treating of cases of malversation by revenue servants being adjudicated by revenue authorities. If the offence was committed before a native judge, the judges would be sorry to restrict its prosecution to the contingency of the said officer granting a certificate.

11. In respect to the English records of trials by magistrates, the subject of Mr. Anderson's 61st paragraph, they are very greatly improved since that gentleman went the circuit; in many which came before the Judicial Commissioner in review, he states they were as detailed as could possibly be required, and embracing all the points suggested; but as this is not the case always, the judges would strongly urge the advisability of such being peremptorily insisted upon. Want of leisure will be pleaded against its adoption; the judges would not allow it any consideration; where doubts exist, they cannot be too deeply considered, and time is well employed in bringing them to a satisfactory solution; if the case is clear, a very summary record will suffice; to carry this arrangement into effect will require only the sanction of the Governor in Council. So it appeared to Mr. Anderson, and the judges fully concur in his opinion; here they cannot see the necessity of any alteration in the law.

12. Two minutes of the fourth Puisne Judge are submitted, according to his wish expressed to that effect.

I have, &c.

Bombay Sudder Adawlut, 8 May 1838.

(signed) *J. W. Woodcock*,
Assistant Register.

It is hereby enacted, in modification of clause 5, section 13, of Regulation of 1827, that a sentence passed by an assistant session judge, whereby a convict is liable to imprisonment for a period exceeding two years, shall not be carried into execution until confirmed by the session judge, whose powers and proceedings in respect to such case shall be the same as are laid down for the guidance of the Sudder Foujdaree Adawlut in clause 2 of the foregoing section and Regulation, and the necessity of referring such case to the Sudder Foujdaree Adawlut is hereby superseded.

An Extract, being the 5th to 10th Paragraphs inclusive, of a Minute by the Acting Senior Puisne Judge.

5. I have read with great attention Mr. Williamson's report upon the subject, but the result has in nowise altered my impressions.

6. I am not of opinion that the present tribunals do punish "promptly on the spot" cases of fraud and embezzlement; our criminal returns amply prove the reverse, and that such cases lie over longer than others; nor can I admit his deduction, from the law having been passed in his Government, that Mr. Elphinstone was well aware of revenue officers being the fittest for trying such delinquencies, for had such been Mr. Elphinstone's belief, he would not have permitted the judicial authorities to retain, as they have done, the investigation of the most serious cases.

7. It is not proposed to transfer every case of fraud to the Adawlut, as one might infer from Mr. Williamson's 6th paragraph, but merely to extend a principle at present in force, to give a wider range to the jurisdiction of the judicial courts, and to curtail that of the revenue officers as to offences, in which the latter's immediate servants are implicated; in other words, to prescribe a course now generally adopted through choice. I greatly doubt if more witnesses will be brought to the hoozoor than at present; the only difference will be, that they will come to the Adawlut with the prospect of an immediate return to their homes, instead of to the cutcherry, where a collector's numerous avocations may keep them some time, with every desire on his part to release them.

8. It is not because I abstractedly consider a session judge more qualified than a magistrate to decide the cases now proposed to be transferred, but because the latter is in a measure prosecutor also; because the parties accused cannot appear before him until his mind has more or less prejudged the merits of the case; because the tribunal of the session judge being appropriated solely for the trial

trial of cases, is in all respects better constituted than another, of which such trials form a very small portion of the duties; and because, after a lengthened experiment, the present system appears to have failed in the objects contemplated; viz. the decision of charges of malversation on the spot, and at once.

9. The present law, I agree with Mr. Anderson, is defective in not punishing false accusers; the Regulation quoted by the Revenue Commissioners, as it only renders conspiracy penal, will by no means embrace all cases of corrupt prosecution.

10. I cannot agree with Mr. Williamson in any part of his 14th paragraph, and there is a good deal elsewhere, which I have not noticed, although I differ with him, from a desire to avoid diffuseness in a matter which has been already determined upon.

(True extract.)

(signed) *J. W. Woodcock*, Assist. Reg.

An Extract, being the 2d to 5th Paragraphs inclusive, of a Minute by the Acting Third Puisne Judge.

2. The extended penal jurisdiction conferred on assistant collectors as magistrates, in the cognizance of malpractices by the officers on their establishments, has effected a marked modification in the system; as in the majority of cases the collector stands in the relation of the appellate authority, rather than prosocutor and judge, as heretofore. Even assenting to the remark that the judgment may be warped in the case of public officers in whom confidence has been placed, and here I may observe, it is stated by Mr. Williamson that the native establishment in the Poonah zillah cannot amount to less than 3,000 individuals, it is no inconsiderable security for arriving at a just decision, that the case passes in review before two distant tribunals, nor is it of small moment that this involuntary bias is at least a salutary one, inasmuch as it tends to the conviction of the accused, and thereby protects the injured party at the least possible sacrifice of justice, while an appeal to the session judge furnished an adequate remedy against the evil of a wrong decision by the primary tribunals, particularly when it is considered that the class of persons who, as offenders, would resort to this court, are, from employment under Government, acquainted with its practice, and the form of procedure necessary to attain redress.

3. It is conceded by the honourable Court of Directors, that in petty cases, it may be necessary in practice, and may be free from material objection, that the collector and magistrate should exercise jurisdiction over his native servants, though himself the accuser. The question then would seem to resolve itself into the extent of punishment that may with safety be entrusted to the revenue authority. Assuming that the limit of punishment for petty offences is fixed at three months' imprisonment, and less than this would afford but little relief, the operation of bias has ample scope, and the heretofore respectable native servant may be as seriously injured in character by a sentence thus circumscribed, as one of longer duration, with the power of an immediate appeal within his reach. The disgrace is in the sentence; beyond this I do not perceive that greater evils would result, none at least of a magnitude to counteract the advantage which the present system possesses, by the collector exercising enhanced jurisdiction, since the execution of the warrant must be referred to the session judge, and the same day that witnesses the incarceration of the offender, would, at his option, be marked by an appeal for a review of judgment.

4. The one resulting evil of continuing the powers now vested in the collector or magistrate, as I understand it, is the apprehension entertained that the accused may not have justice dispensed to him on account of the bias in the mind of his judge. My own impression is, but it is with hesitation and with very considerable deference I record it, that this evil is negatived by the avenues of appeal being ever open and accessible.

5. The ill consequences likely to result from sending passes to the session judge for trial have, I think, been forcibly insisted on by the Revenue Commissioner, and the advantages of hearing and redressing grievances on the spot, justly pointed out. The personal inconveniences suffered by accusers and witnesses in attendance successively before the magistrate and session judge; the prolonged detention

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from home, and tardiness of trial, are to the ryots subjects of serious moment, particularly at those seasons of the year when their presence is required at their villages, and would tend, I fear, to deter them from seeking satisfaction in many cases for their own grievances, and repress all desire of exposing frauds committed against Government. Any system that diminished these inconveniences is deserving of attention, and if the duties of a collector and his experienced assistants in the revenue branch do not press for their exclusive occupation, I am disposed to think that more benefit than evil would arise from continuing to them modified penal jurisdiction to the extent authorized by Regulation IV. of 1831, which would in every case, if the collector thought proper, constitute him the appellate authority, and at the same time bring under cognizance of the revenue authorities the major portion of cases founded on fraud and malpractices of their native officers.

(signed) *John Pyne*,
Acting Third Puisne Judge.

MINUTE by the Fourth Puisne Judge.

THE points on which we are now required to report on at present appear to me to be limited to the following, by Mr. Secretary Willoughby's letter of the 15th January last :

1st. To say when we are likely to send in our report regarding the investment in native judicial officers of criminal jurisdiction, a copy of the same, preparing for the Law Commission, having been promised to the Government.

2d. The draft of an Act authorizing session judges to alter their assistants' sentences, instead of the Sudder Foujdaree Adawlut.

3d. The Court of Directors order the Regulation to be altered in regard to the authority vested in magistrates to try serious cases of delinquency on the part of the collectors' establishment, and, till a Regulation be passed, to require all serious cases to be handed over to the judge. On this subject our report is required, whether this may not be done by an order from Government and the Sudder Foujdaree Adawlut.

4th. Calling for draft of a Regulation requiring magistrates to keep an English record, the Court having said a new law was necessary.

5th. Calling for draft of a law, as recommended by the Court, requiring proof of the qualification of assistant magistrates, before entrusting them with powers of punishment.

1st. The register will be able to report the progress that has been made towards a completion of the report adverted to in the first inquiry.

2d. I concur in the draft proposed by the acting session judge, in compliance with the instructions on the second subject.

3d. As the object of the third point of reference appears to me rather to ascertain whether the positive orders of the Court of Directors, to transfer all serious cases of delinquency to the session judge, can be carried into effect, pending the passing of a law reducing the jurisdiction in such cases of the magistrates, than to enter into the merits of a proposition regarding the propriety of retaining extraordinary powers in their hands, I would confine my opinion strictly to what I understand to be the object of reference; and conceiving the orders of the Government and of the Sudder Foujdaree Adawlut sufficient to attain the object in view, I think the instructions of the Right honourable the Governor in Council for the guidance of the magistrates intermediately, would be sufficient to keep the existing law in abeyance.

4th. I concur with the acting senior Puisne Judge, that no new law is necessary to require magistrates and their assistants to keep the English record contemplated; and the contrary opinion having been given by the court, when two judges only were present, I think the full court now assembled may supersede the same. Under this explanation, I would take this occasion to say, that although Mr. Baber, the magistrate of Dharwar, adopted my suggestion, as Judicial Commissioner, in regard to English records, and instructed his assistants accordingly, in practice, little or no attention was paid to it either by himself or subordinates, it having been an entirely optional duty on their part. The authority of Government, nevertheless, would be ample.

5th. I also

5th. I also concur with Mr. Simson in considering no new law necessary for restraining assistant magistrates in the exercise of their duties, and would give this as the opinion of the court, under similar explanation as I have adverted to in the preceding remarks. I would also remind my colleagues and the Government, of the circular, No. 782 of 1831, which prohibited assistants of less than two years' standing being employed but ministerially, and of that of No. 817 of 1832, which sanctioned a departure from this rule in special cases.

22 March. (signed) *D. Greenhill.*

As I do not at present know what the nature of the court's reply may be to the reference, and being about to depart on my tour, I have on another sheet minuted my opinions, to be embodied in the letter, or sent up separately, in the event of the court's answer embracing other subjects (than the information alluded to in the first head, of course), or entering much more fully into the discussion of these I have touched upon.

2 April. (signed) *D. Greenhill.*

MINUTE by the Fourth Puisne Judge.

CONFINING my opinion to the points particularly referred by Government in their secretary's letter of the 28th January last, it appears to me that the objects the honourable the Court of Directors have in view in directing (in the 42d paragraph of their despatch, dated 26th February 1836) all serious charges against the collectors' native servants may be sent for trial before the session judge, may be obtained intermediately till a law be passed by the instructions of the Government and of the Sudder Foujdaree Adawlut; nor do I think that the Revenue Commissioner has shown sufficient grounds for the suspension of those orders. I have concurred in the draft of a law enabling session judges to review and alter the sentences of their assistants, as instructed in the second paragraph; and in regard to the requisition of paragraph 5, I am of opinion that no new law is necessary to cause magistrates and their assistants to keep the English record contemplated; and notwithstanding that a contrary opinion has been given by the court, seeing that that opinion was delivered by the judges only, and not by a full court, I conceive that an interpretation by the court, composed of three judges, may properly supersede it, and in the present case I think it would be advisable to do so. With reference to the enactment noticed in the 6th and last paragraph, under the above explanation, I do not see the necessity of a law on the subject, the object being allowable by instructions similar, in fact, to the circular No. 782 of 1831, which prohibited asssitants of less than two years' standing being employed but ministerially, which, however, seems to have become nearly obsolete, a departure from it having been sanctioned by circular, No. 817 of 1832, both which I would bring to the notice of the honourable Board.

2 April. (signed) *D. Greenhill.*

EXTRACT Para. 6, of a Despatch from the Honourable the Court of Directors; dated 16 May 1838.

Para. 6. IN the letter from the Revenue Commissioner herein referred to, that officer urges the advantage arising from the jurisdiction exercised by collectors in cases of misconduct on the part of the revenue servants. We do not question the soundness of this representation; nevertheless we must again draw your attention to the instructions conveyed to you in the following passage of our despatch dated 26th February 1836, and must desire that they may be acted upon.

"In petty cases it may be necessary in practice, and may be free from any material objection, that the collector and magistrate should exercise jurisdiction over his native servants, although himself their accuser; but it is not fit nor safe, that under such circumstances he should be empowered to inflict severe punishment. We desire that the provisions of your Regulations in this respect

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may be altered, and in the mean time that, according to Mr. Anderson's suggestion, all serious charges against the collector's native servants may be sent to him for trial before the judge."

(True extract.)
(signed) *J. P. Willoughby*,
Secretary to Government.

MINUTE by the Honourable *A. Amos*, Esq.; dated 20 December 1838.

Legis. Cons. 25 Feb. 1839. No. 3.

THE subjects contained in this very multifarious communication from Bombay are as follows:—

1. An order from the Directors to bring under the consideration of the Law Commissioners certain defects in the definition of the Bombay law of treason.
2. An order to alter the Bombay Regulations, so that collectors shall not punish their native servants in cases where a severe punishment is required.
3. The extent of penal jurisdiction to be entrusted to natives.
4. Sentences of assistant sessions judges to be confirmed by sessions judges, and not by the Sudder Court.
5. On the expenses of convicts.
6. On pardons to accomplices.
7. Junior assistants, employment of, in magisterial cases.
8. Prevention of prosecutions for perjury and forgery.
9. English records of trials before magistrates.

I will advert, in the first instance, to those heads which may be shortly disposed of.

3. The judges of the Sudder say, that they have not fully considered this matter, and will send a report.

4. A draft Act is sent, which may be adopted.

5. The judges supply information, but nothing appears to be referred to us.

6. The Bombay authorities should be referred to No. XV. of 1838, and be asked, with reference to that Act, what legislative measure is proposed.

7. The Sudder Court propose to effect this object, by orders, without any new law; we may approve.

8. The Sudder Court disapprove of any new; it is a proposal of Mr. Anderson, not ordered.

9. The Sudder Court think that this may be effected without any new law, by an order.

1. The directors in this despatch order the Bombay treason law to be submitted for revision to the Law Commissioners; but both despatches were dated before the publication of the code, the fifth chapter of which contains the definitions of state offences proposed by the Law Commissioners. A draft Act on the subject of the two last sections of that chapter is at present before Lord Auckland. The only object of referring the Bombay Regulations to the Law Commissioners would be that of immediately modifying the Bombay law of treason, without waiting for the enactment of a general law of treason, applicable to all the Presidencies, as proposed in the code. There seems the less occasion for this step, as the Bombay judges say, that in consequence of their circular orders, any practical inconvenience arising from the defects complained of will be obviated; such a reference would also occasion some delay or hindrance to the Commissioners in their labours for amending the law of procedure, the speedy and complete amendment of which is an object of the utmost importance; still, it is much more agreeable to make the reference than to incur the risk of displeasing the Directors by disobeying their orders, or to take any responsibility which the Directors do not wish to impose upon us.

2. The second despatch of the Directors upon this subject seems to make legislation imperative. It will be necessary to draw the particular attention of the Bombay judges towards the necessary provisions of an Act on this subject, but in order to save time, I have prepared a draft of an Act, pursuant to the suggestion in para. 4, of the letter from the judges.

20 December 1838. (signed) *A. Amos.*

DRAFT

DRAFT OF ACT.

IT is hereby enacted, the clause 4, section 11, and clause 3, section 27, of Regulation XVI. of 1827, of the Bombay code, and section 2, of Regulation IV. of 1831, of the same code, be from the time of passing this Act rescinded.

31 December 1838.

Leg. Cons. 25 February 1839. No. 4.

DRAFT OF ACT.

IT is hereby enacted, in modification of clause 5, section 13, of Regulation XIII. of 1827, of the Bombay code, that all sentences passed by an assistant session judge, whereby a convict is liable to imprisonment for a period exceeding two years shall, before they are carried into execution, be confirmed by the session judge, whose powers and proceedings in respect of any such case shall be the same as are laid down for the guidance of the Sudder Foujdaree Adawlut in clause 2 of the section and Regulation aforesaid, and it shall not be necessary to refer any such case to the Sudder Foujdaree Adawlut.

31 December 1838.

Leg. Cons. 25 February 1839. No. 5.

(No. 6.)

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *J. P. Willoughby*, Esq., Secretary to the Government of Bombay; dated 31 December 1838.

Leg. Cons. 25 February 1839. No. 6.

Sir,

I AM directed by the honourable the President in Council, to acknowledge the receipt of your letter, No. 2618, dated the 6th instant, with its enclosures.

The following topics are noticed in your communication under reply, and in the papers enclosed therewith.

1. An order from the Court of Directors to bring under the consideration of the Law Commissioners certain defects in the definition of the Bombay law of treason.

This topic has been taken into consideration by the President in Council, and will form the subject of a future letter.

2. An order from the honourable Court to alter the Bombay Regulations, so that collectors shall not have power to punish their own native servants in cases where a severe punishment is required.

This topic has likewise been taken into consideration, and will form the subject of a future letter.

3. The extent of penal jurisdiction to be entrusted to natives.

As it appears that this matter has not yet been fully considered by the judges of the Bombay Sudder Court, who promise to report further upon it hereafter, it does not now call for any orders from this Government.

4. A proposal that sentences of assistant sessions judges shall be confirmed by sessions judges, and not by the Sudder Court.

This matter is under consideration, and will form the subject of a further letter.

5. The expenses of convicts.

This subject does not appear to have been referred for the consideration and orders of this Government.

6. The state of the Bombay law regarding pardons to accomplices.

It appears probable that Act XV. of 1838, which repeals clause 1, section 35, Regulation XII. of 1829, of the Bombay code, will, in the opinion of the judges of Sudder Court, have rendered further legislation on this subject unnecessary.

7. The employment of junior assistants in magisterial cases.

No legislative measure is thought necessary with reference to this point, and the observations of the judges of the Bombay Sudder upon the present practice, seem to call for no remark from this Government.

8. Prevention of prosecutions for perjury and forgery.

The judges disapprove of any new law of the sort proposed by Mr. Anderson and the Government of India see no reason to legislate specially onthe matter.

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9. English records of trials before magistrates.

As it is the opinion of the judges that all that is desirable with reference to this point, can be effected by the court and the executive Government without any new legislative Act, this subject does not call for any orders from this Government.

I have, &c.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

31 December 1838.

(No. 12.)

Leg. Cons. 25 February 1839. No. 7.

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *H. W. Torrens*, Esq., Officiating Secretary to Government of India with the Governor-general; dated 31 December 1838.

Sir,

Letter from Secretary to the Government of Bombay, dated 6 Dec. 1838, with one Enclosure. Minute by Mr. Amos, dated 20 December 1838. Draft of two Acts proposed by Mr. Amos. Letter from Mr. Amos to Government of Bombay, dated 24 Dec. 1838. Judicial Cons. 20 April 1835. Nos. 8 & 9. 22 June, 1 to 3.

I AM directed by the honourable the President in Council, to request that you will lay before the Right honourable the Governor-general of India, the accompanying papers received from the Governor of Bombay, together with a copy of a minute recorded upon them by Mr. Amos, in which last-mentioned paper will be found a concise account of the various subjects treated of in the reference from Bombay.

1. The most material point relates to the bad state of the Bombay law of treason, owing to the faultiness of the definition of that offence adopted by the Bombay code. Before the India Law Commissioners had published the penal code prepared by them, the Court of Directors had twice ordered this matter to be referred for the consideration of that body. The present reference from Bombay is in obedience to these orders. The questions for consideration with respect to this point, seem to be the following.

2. Whether it is best, 1st, to follow the letter of the honourable Court's orders, by referring the matter to the Law Commissioners, with a view to the preparation by them of an amended law of treason to be applicable to Bombay; or, 2d, considering the 5th class of the projected penal code, as embodying the law of treason, which the Law Commissioners would propose to substitute to that of the Bombay code, to legislate at once upon the point; or, 3d, to allow the Bombay law to remain as it is, until the general penal code be finally disposed of. On these questions I am directed to refer to Mr. Amos's minute, and to request that the Council may be favoured with the opinion of the Right honourable the Governor-general of India.

3. Another point relates to the commands of the honourable Court to alter the Bombay law which enables a collector and magistrate to sentence his own native officers accused of corruption, or other heinous official misconduct, to severe punishment, and to make it necessary to send all serious charges of such a nature to be tried by the sessions judges, leaving petty cases with the magistrates. A draft of a proposed law for this purpose is herewith submitted for his Lordship's consideration before publication.

4. Another point relates to a proposal that the sentences of assistant sessions judges at Bombay shall be confirmed in future by the sessions judges, instead of the Sudder Foujdaree Adawlut, as heretofore. A draft of an Act for carrying this proposal into effect, taken mainly from a draft prepared by the Bombay Sudder Court, accompanies this letter, for the consideration of his Lordship before publication.

5. None of the other points noticed in the communication from Bombay appear to the President in Council to be such as to require immediate orders. They will all be found adverted to in my reply to the secretary to the Government of Bombay, dated this day, a copy of which accompanies this letter.

6. You will be pleased to return the original papers herewith sent, with your reply.

I have, &c.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

Fort William, 31 December 1838.

From

From *H. Torrens*, Esq., Officiating Secretary to the Government of India with the Governor-general, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India; dated 28 January 1839.

Leg. Cons. 25 February 1839. No. 8.

Sir,

I AM directed to acknowledge the receipt of your despatch, No. 12, with enclosures, under date 31st ultimo, submitting a reference regarding the state of the Bombay law of treason, and drafts of two Acts for the consideration of the Governor-general.

2. I have the honour to state, in reply, that the Governor-general sees no objection to the publication of the drafts in question, and that as regards the disposal of the reference on the law of treason, he fully concurs in the propriety of the course recommended by Mr. Amos.

3. The original enclosures received with your letter are returned herewith.

I have, &c.

(signed) *H. Torrens*,
Officiating Secretary to the Government of India,
with the Governor-general.

Camp Dhunowda,
28 January 1839.

THE following draft of a proposed Act was read in Council for the first time, on the 25th February 1839.

Leg. Cons. 25 February 1839. No. 9.

ACT No.——, of 1839.

IT is hereby enacted, that clause 4, section 11, and clause 3, section 27, of Regulation XVI. of 1837 of the Bombay code, and section 2, of Regulation IV. of 1831, of the same code, be from the time of passing this Act rescinded.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India after the 25th day of May next.

(signed) *F. Millett*,
Officiating Secretary to the Government of India.

25 February 1839.

THE following draft of a proposed Act was read in Council for the first time on the 25th February 1839.

Leg. Cons. 25 February 1839. No. 10.

ACT No.——, of 1839.

IT is hereby enacted, in modification of clause 5, section 13, of Regulation XIII. of 1827 of the Bombay code, that all sentences passed by an assistant session judge, whereby a convict is liable to imprisonment for a period exceeding two years, shall, before they are carried into execution, be confirmed by the sessions judge whose powers and proceedings in respect of any such case shall be the same as are laid down for the guidance of the Sudder Foujdaree Adawlut, in clause 2 of the section and Regulation aforesaid, and it shall not be necessary to refer any such case to the Sudder Foujdaree Adawlut.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be considered at the first meeting of the Legislative Council of India after the 25th day of May next.

(signed) *F. Millett*,
Officiating Secretary to the Government of India.

(No. 98.)

From *F. Millett*, Esq., Officiating Secretary to the Government of India, to *J. P. Willoughby*, Esq., Secretary to the Government of Bombay; dated 25 February 1839.

Leg. Cons. 25 February 1839. No. 11.

Sir,

IN continuation of Mr. Officiating Secretary Grant's letter, No. 6, of the 31st December last, I am directed by the honourable the President in Council to forward to you, to be laid before the honourable the Governor in Council, the accompanying two printed copies of drafts of proposed Acts, which, with the concurrence

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of the Right honourable the Governor-general of India, have been published for general information.

2. The drafts have been so published with a view to save time, but, his honour in Council conceives that probably both those Acts, but especially the one which rescinds certain clauses in the Bombay code, may require further revision; he begs, therefore, to call the attention of the Bombay Government to this latter Act, and to request that his honour in Council will, if he considers any further revision necessary, furnish this Government with the form in which he would wish the Act to be passed, it having been drawn from the brief suggestions contained in para. 4 of the letter from the assistant register to the Sudder Adawlut, dated 8 May 1838.

3. With reference to the 7th para. of that letter, the honourable the President in Council requests the attention of the Bombay Government to the provisions of Act No. XV. of 1838, in order that, if further legislation is deemed necessary on the subject, in addition to the provisions contained in that Act, he may be favoured with the draft of such a law as may be considered necessary to provide for the object.

4. His honour in Council concludes that the judicial authorities at Bombay do not consider any further legislation necessary with regard to the other miscellaneous matters contained in the papers which accompanied your letter under acknowledgment.

I have, &c.
(signed) *F. Millett*,
Officiating Secretary to Government of India.

Fort William, 25 February 1839.

(No. 1347 of 1839.—Judicial Department.)

Leg. Cons. 3 June 1839. No. 57.

From *J. P. Willoughby*, Esq., Secretary to Government of Bombay, to the Officiating Secretary to the Government of India in the Legislative Department; dated 13 May 1839.

Sir,

I AM directed to acknowledge the receipt of your letter dated the 25th of February 1839, No. 98, and to transmit, to be laid before the honourable the President in Council, copy of a letter dated the 6th inst. from the register of the Sudder Foujdaree Adawlut, reporting the opinion of the judges of that court in respect to the draft of the proposed Act, providing that sentences passed by assistant session judges shall be confirmed by session judges, instead of by the Sudder Foujdaree Adawlut.

The draft of the proposed Act, altering the jurisdiction of the collectors as magistrates over their native revenue servants, having been transferred to the Revenue Department for consideration, I am desired to refer you to the acting chief secretary's letter of the 2d inst., No. 1447, communicating the sentiments of this Government on the subject of that Act.

The honourable the Governor in Council also instructs me to acquaint you that the information called for on the other points noticed in your letter under reply, and in that of the 31st December last, No. 6, will be furnished with as little delay as possible.

I have &c.
(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle, 13 May 1839.

(No. 815 of 1839.)

Leg. Cons. 3 June 1839. No. 58. Enclosure.

From *P. W. Le Geyt*, Esq., Register Bombay Sudder Foujdaree Adawlut, to the Secretary to Government, Judicial Department, Bombay; dated 6 May 1839.

Sir,

I AM directed by the judges of the Sudder Foujdaree Adawlut to acknowledge your letter of the 21st March last, and in reference to para. 1, to state, that they

they approve of the draft Act therewith forwarded, providing that sentences passed by the assistant sessions judge shall be confirmed by the session judges, instead of by the Sudder Adawlut.

I have, &c.
(signed) *P. W. Le Geyt*, Register.

Bombay Sudder Foujdaree Adawlut,
6 May 1839.

(True copy.)
(signed) *J. P. Willoughby*,
Secretary to Government.

(No. 343.)

From *J. P. Grant*, Esq., Officiating Secretary to Government of India, to *H. Maddock*, Esq., Officiating Secretary to Government of India with the Governor-general; dated 3 June 1839.

Leg. Cons. 3 June 1839. No. 59.

I AM directed by the honourable the President in Council to forward to you, for the assent of the Right honourable the Governor-general of India, as required by section 70 of the Charter Act, the accompanying printed copy of the draft of a proposed Act, as noted in the margin*. The Act was prepared in consequence of the recommendation of the Bombay Government, reported to his Lordship in my letter of 31 December last. It was read in Council for the first time on the 25th of February last, and it has been since approved by the Sudder Judges at Bombay, as will appear from the accompanying copies of papers.

2. The other Act, recommended in the same communication from Bombay, a draft of which was read also on the 25th February last,† is still the subject of correspondence between this Government and that of Bombay. The proceedings connected with it will be hereafter reported to the Governor-general.

I have, &c.

Fort William,
3 June 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 1447 of 1839.—Territorial Department, Revenue.)

From *L. R. Reid*, Esq., Acting Chief Secretary to Government of Bombay, to *F. Millett*, Esq., Officiating Secretary to the Government of India; dated 2 May 1839.

Leg. Cons. 10 June 1839. No. 35.

Sir,

I AM directed by the honourable the Governor in Council, to acknowledge the receipt of your letter of the 25th February last in the Legislative Department, forwarding draft of a proposed Act, depriving the collectors and their assistants, in their capacity of magistrates, of the extraordinary power of punishing offences committed by the revenue officers under their control, conferred on them by certain existing Regulations of the Bombay code.

2. The draft in question should, it appears to the Governor-general, include among the rescinded clauses, clause 4, section 16, of Regulation XVII. of 1827; and as it is presumed that the officers above named are to be deprived of these extraordinary powers over their magisterial as well as over other revenue establishments, clause 2, section 8, Regulation XII. of 1827, should also be rescinded.

3. In the trial of the offences contemplated, the collectors and their assistants will, it is presumed, still retain the power of awarding punishment to the extent of their ordinary jurisdiction. In order, however, to remove all doubt on the subject,

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* Empowering sessions judges to confirm the sentences of assistant judges in all cases where a convict is liable to be imprisoned for a period exceeding two years.

† Repealing parts of those Regulations of the Bombay code, which provide for the punishment by collectors of their native servants.

subject, a few words declaratory of this point might be inserted. The whole of Regulation IV. of 1831 will then no longer be necessary.

Vide No. 7. Enclosure.

4. Enclosed is a revised draft of Act, with the several alterations above noticed, which the Governor in Council requests may be substituted for that read for the first time on the 25th February last.

1 to 7.

5. I am desired also to transmit a copy of the correspondence that has passed between Government and the court of Sudder Adawlut upon this subject.

I have, &c.

Bombay Castle, 2 May 1839. (signed) *L. R. Reid,*
Acting Chief Secretary.

No. 1.

(No. 7 of 1839.)

Leg. Cons. 10 June 1839. No. 36. Enclosure.

From *C. Sims*, Esq., Acting Register Sudder Foujdaree Adawlut, to the Secretary to Government, Judicial Department, Bombay; dated 4 January 1839.

Sir,

I AM directed by the judges to request that you will bring to the notice of the honourable the Governor in Council the great inconvenience which is experienced in consequence of the provisions of Regulation IV. of 1831, not having been made applicable to section 27 of Regulation XVI. of 1827, in the same manner as section 11 of the same Regulation; and to offer the suggestions of the court that this alteration be made in the first quoted Regulation.

I have, &c.

Bombay Sudder Foujdaree Adawlut, 4 January 1839. (signed) *C. Sims,*
Acting Register.

No. 2.

(No. 417.—Judicial Department.)

From *J. P. Willoughby*, Esq., Secretary to Government of Bombay, to *C. Sims*, Esq., Acting Register of the Sudder Adawlut; dated 13 February 1839.

Sir,

I AM directed to acknowledge the receipt of your letter, dated the 4th ultimo, No. 7, representing the inconvenience arising from the provisions of Regulation IV. of 1831, not having been made applicable to section 27 of Regulation XVI. of 1827, in the same manner as section 11 of the same Regulation, and suggesting that the necessary alteration may be made in the former Regulation.

In reply, I am instructed to inform you, that the honourable the Governor in Council is of opinion, that the modification recommended by the judges to embrace section 27 of the Regulation referred to, should be made, Government seeing no reason why assistant collectors should not have cognizance of cases coming under it, as well as section 11.

The Governor in Council therefore requests that the judges of the Sudder Adawlut will be pleased to frame the draft of an Act for the purpose adverted to, in order that it may be submitted to the Goverment of India, in view to its being passed into law, should no objection occur to the honourable the President in Council.

I have, &c.

(signed) *J. P. Willoughby,*
Bombay Castle, 13 February 1839. Secretary to Government.

No. 3.

(No. 394 of 1839.)

From *P. W. Le Geyt*, Esq., Register Bombay Sudder Adawlet, to the Secretary to Government, Judicial Department, Bombay; dated 14 March 1839.

Sir,

I AM directed by the judges of the Sudder Adawlut to acknowledge the receipt of your letter, No. 417, dated 13th ultimo, requesting the court to frame the draft of an Act for the purpose of making the provisions of Regulation IV. of 1831

1831 applicable to section 27 of Regulation XVI. of 1827, and to request that you will submit to the honourable the Governor in Council the accompanying Act, in order that the same may be passed into a law, if approved of by the Government of India.

I have, &c.

Bombay, Sudder Adawlut, 14 March 1839.

(signed) *P. W. Le Geyt*, Register.

(True copies.)
(signed) *L. R. Reid*,
Acting Chief Secretary.

No. 4.

(No. 500 of 1839.)

From *P. W. Le Geyt*, Esq., Register, Bombay Sudder Adawlut, to the Secretary to Government, Judicial Department; dated 2 April 1839.

Sir,

I AM directed by the judges of the Sudder Adawlut to request that you will bring to the notice of the honourable the Governor in Council that, from the perusal of the proposed draft of the Act read on the 25th February 1839, it appears to the judges that clause 4, section 16, Regulation XVII. of 1827, should likewise be rescinded.

Page 184, Government Gazette, for 1839.

I have, &c.

(signed) *P. W. Le Geyt*,
Register.

(No, 1337 of 1839.—Territorial Department, Revenue.)

From *L. R. Reid*, Esq., Acting Chief Secretary to Government of Bombay, to *P. W. Le Geyt*, Esq., Register of the Court of Sudder Adawlut; dated 19 April 1839.

Sir,

I AM directed by the honourable the Governor in Council to acknowledge the receipt of your letter, No. 394, dated the 14th ultimo, handing up draft of an Act making the provisions of Regulation IV. of 1831, clause 1, section 1, applicable to the offences specified in clauses 1 and 2, section 17, of Regulation XVI. of 1827.

Judicial Dep.

2. As the Government of India has already before it draft of an Act for depriving the collectors and their assistants of the extensive jurisdiction which they at present exercise over their native establishments, the Governor in Council is of opinion that it would be preferable if the same Act provided for the object referred to in the preceding paragraph. I am accordingly directed to request that you will, with the permission of the judges of the court of Sudder Adawlut, hand up as early as practicable, draft of an Act to be substituted for that which was read for the first time before the Legislative Council on the 25th of February last.

3. The Governor in Council concludes that the recession of the clauses and sections specified in the draft Act read on the 25th February, will have no effect in depriving either the collectors or their assistants of the power of trying cases against their native officers, and punishing to the extent of their ordinary jurisdiction, as laid down in section 3, Regulation IV. of 1830. If there is any doubt upon this point, it should be cleared up in the draft Act which you have been requested to prepare.

4. The Governor in Council concurs entirely with the opinion of the judges as expressed in your letter, No. 500, dated 2d instant, that clause 4, section 16, of Regulation XVII. of 1827, ought to be rescinded. This, therefore, should be provided for in the new draft Act.

Judicial Dep.

I have, &c.

(signed) *L. R. Reid*,
Acting Chief Secretary.

Bombay Castle, 19 April 1839.

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No. 6.

(No. 737 of 1839.)

From *P. W. Le Geyt*, Esq., Register Sudder Adawlut, to Acting Chief Secretary, Territorial Department, Revenue, Bombay; dated 27 April 1839.

Sir,

I AM directed by the judges of the Sudder Adawlut to acknowledge your letter, No. 1337, of the 19th instant, and in reference to the observations therein contained, to hand up the accompanying revised draft of an Act, which should, in the opinion of the judges, be substituted for that submitted in my letter, No. 394, of the 14th ultimo, as well as for the draft read before the Legislative Council on the 25th of February last.

I have, &c.
(signed) *P. W. Le Geyt*, Register.

No. 7.

(Act, No.—— of 1839.)

IT is hereby enacted, that Regulation IV. of 1831, and clause 4, section 11, and clause 3, section 27, of Regulation XVI., and clause 4, of section 16, of Regulation XVII., and clause 2, section 8, of Regulation XII. of 1827, of the Bombay code, be rescinded; and it is further enacted, that in the disposal of the cases contemplated in sections 11 and 27, of Regulation XVI. of 1827, and section 16, of Regulation XVII. of 1827, and section 8, of Regulation XII. of 1827, the penal jurisdiction of the collectors as magistrates, and of assistant collectors as assistant magistrates, shall be such as those officers are entitled to exercise under the ordinary Regulations.

(True copies.)
(signed) *L. R. Reid*,
Acting Chief Secretary.

(No. 362.)

Leg. Cons. 10 June 1839. No. 37.

From *J. P. Grant*, Esq., Officiating Secretary to Government of India, to *L. R. Reid*, Esq., Acting Chief Secretary to the Government of Bombay; dated 10 June 1839.

Sir,

I AM directed by the honourable the President in Council, to acknowledge the receipt of your letter dated the 2d ultimo, inclosing papers connected with a proposed Act for taking away from collectors as magistrates, and assistant collectors as assistant magistrates, the extraordinary powers they now possess of punishing their native officers for certain offences.

2. It appears to his honor in Council, that the amended draft Act forwarded with your letter may require some alteration, clause 4, section 11, and clause 3, section 27, of Regulation XVI. of 1827; clause 4, section 16, of Regulation XVII. of 1827, and clause 2, section 8, Regulation XII. of 1827, give a special power of punishing, not only to collectors and magistrates, but also to criminal or sessions judges. In repealing those clauses, and providing especially for the retention notwithstanding of the ordinary penal jurisdiction, of collectors as magistrates, and assistant collectors as assistant magistrates, without making similar provision for the ordinary penal jurisdiction of sessions judges, the Act might perhaps give rise to doubts whether the ordinary penal jurisdiction of sessions judges were not repealed, for if the provision were necessary in one case, it would equally be necessary in the other.

3. It does not appear from the papers, that it was the intention to take from sessions judges the extended absolute jurisdiction in cases of the description in question, specially given them by the clauses above named; but the President in Council observes, that this would certainly be done by the enactment of the law in its proposed shape.

4. If it be determined to leave the absolute power of the sessions judges in such cases, as especially provided in some of the cases to be repealed, whilst the extra-

ordinary

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ordinary powers of collectors and assistant collectors in the same cases are taken away, without affecting their ordinary powers in these or any other cases, the President in Council thinks that this would be effected by the enactment of the appended draft Act (A.)

5. If, on the other hand, it be determined to leave charges of the nature in question to be dealt with exactly like charges for other offences (and perhaps this may be the more consistent course), the President in Council thinks that the object would be effected by the enactment of the appended draft Act (B.)

6. The honourable the Governor in Council is requested, after consulting the judges of the Sudder, to inform the President in Council which principle he recommends, and to state whether the form of law proposed is unobjectionable.

7. It does not appear to the President in Council to be necessary to provide specially, that the repeal of these Regulations shall not affect the general powers of the judicial authorities in respect to the particular classes of offences in question. If the Sudder Court entertains no doubt on this point, it need not be provided for, otherwise, it is thought that the addition of a proviso, such as is appended separately, will be sufficient.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

Fort William, 10 June 1839.

DRAFT ACT (A).

AN Act for the Presidency of Bombay, limiting the powers of Collectors as Magistrates, and Assistant-Collectors as Deputy Magistrates, in certain cases.

IT is hereby enacted, that Regulation IV. of 1831 be repealed, and that clause 4, section 11, and clause 3, section 27, of Regulation XVI. of 1827, clause 4, section 16, of Regulation XVII. of 1827, and clause 2, section 8, of Regulation XII. of 1827, of the Bombay code, so far as they relate to the penal jurisdiction of collectors as magistrates, be repealed.

DRAFT ACT (B).

IT is hereby enacted, that Regulation IV. of 1831, clause 4, section 11, and clause 3, section 27, of Regulation XVI. of 1827, clause 4, section 16, of Regulation XVII. of 1827, and clause 2, section 8, of Regulation XII. of 1827, of the Bombay code, be repealed.

Proviso to be added, if necessary.

Provided always, that the offences specified in the said sections; viz., sections 11 and 27 of Regulation XVI. of 1827, section 16, of Regulation XVII. of 1827, and section 8, of Regulation XII. of 1827, shall be cognizable by *session judges,* magistrates and assistant magistrates, under the general powers which are or hereafter may be vested in them by the Acts and Regulations applicable to the Bombay Presidency.

Omit for draft (A.)

From *T. H. Maddock,* Esq., Officiating Secretary to the Government of India with the Governor-general, to *J. P. Grant,* Esq., Officiating Secretary to the Government of India; dated 27 June 1839.

Leg. Cons. 22 July 1839. No. 1.

Sir,

I AM directed by the Right honourable the Governor-general to acknowledge the receipt of your letter, No. 343, dated the 3d instant, with its enclosures, and, in reply, to enclose his Lordship's assent, in the usual form, to pass into law the proposed Act, empowering sessions judges to confirm the sentences of the assistant judges, in all cases where a convict is liable to be imprisoned for a period exceeding two years.

I have, &c.,
(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India,
with the Governor-general.

Simla, 27 June 1839.

Simla, 27 June 1839.

Leg. Cons. July 1839. No. 2. Enclosure.

I DO hereby, under section 70, 3 & 4 Will. IV., c. 85, give my assent to the proposed Act, empowering sessions judges to confirm the sentences of the assistant judges, in all cases where a convict is liable to be imprisoned for a period exceeding two years, received from the honourable the President in Council in Mr. Officiating Secretary Grant's letter, No. 343, dated the 3d June 1839.

(signed) *Auckland.*

ACT No. XIX. of 1839.

Leg. Corr. 22 July 1839. No 3

Passed by the Honourable the President of the Council of India in Council, on the 22 July 1839.

IT is hereby enacted, in modification of clause 5, section 13, of Regulation XIII. of the Bombay code, that all sentences passed by an assistant session judge, whereby a convict is liable to imprisonment for a period exceeding two years, shall, before they are carried into execution, be confirmed by the session judge, whose powers and proceedings, in respect of any such case, shall be the same as are laid down for the guidance of the Sudder Foujdaree Adawlut, in clause 2 of the section and Regulation aforesaid, and it shall not be necessary to refer any such case to the Sudder Foujdaree Adawlut.

(No. 1703 of 1839—Judicial Department.)

Leg. Cons. 29 July 1839. No. 4.

From *J. P. Willoughby*, Esq., Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India in the Legislative Department; dated 3 July 1839.

Sir,

WITH reference to the third paragraph of my letter, dated the 13th May last, No. 1347, I am directed by the honourable the Governor in Council to transmit, for submission to the honourable the President in Council, the accompanying copy of a letter from the acting deputy register of the Sudder Adawlut, dated the 5th ultimo, reporting the opinion of the judges of that court, in regard to the subjects adverted to in your letters of the 31st December and 25th February last, Nos. 6 and 98, which were not noticed in my letter above quoted.

I have, &c.
(signed) *J. P. Willoughby,*
Secretary to Government.

Bombay Castle, 3 July 1839.

(No. 1001 of 1839—Judicial Department.)

Leg. Cons. 29 July 1839. No. 5. Enclosure.

From *A. Spens*, Esq., Acting Deputy Register Sudder Foujdaree Adawlut, Bombay, to *J. P. Willoughby*, Esq., Secretary to Government, Bombay; dated dated 5 June 1839.

Sir,

I AM directed to acknowledge the receipt of your letter of the 13th ultimo, in reply to the register's letter of the 6th instant, reporting the opinion of the judges of the Sudder Foujdaree Adawlut, in regard to the proposed Act providing that sentences passed by assistant session judges shall be confirmed by session judges, and referring to the latter part of the 1st paragraph of your letter of the 21st March last, No. 776, requesting that the court will favour Government with its sentiments on the several subjects noticed in the letters from the officiating secretary to the Government of India, dated the 31st December and 25th February last, Nos. 6 and 98.

2. In reply, I am directed to state, that the register, by some oversight, omitted to notice the sentiments of the judges on some of the other subjects alluded to, which, under directions of the judges, I now proceed to communicate.

3. The latter Act, referred to in the second paragraph of the letter from the officiating secretary to the Government of India, dated the 25th of February last, is under a separate reference, made under date the 14th March last.

4. With reference to the 3d paragraph of the above quoted letter, on the subject

of

of the provisions of Act XV. of 1838, relative to pardons to accomplices, I am directed to state that it has been ruled by the Court of Sudder Foujdaree Adawlut, that any pardon granted to an accomplice must be considered a free one for the offence specified, and such person, on giving his evidence, is subject to the same liabilities as other witnesses; this interpretation of the law has been given on references, as to whether, as the law now stands, the pardons might not be considered conditional.

5. The judges are averse to recommending that the pardons shall be conditional, as they consider such a law would tend to encourage an accomplice, under a pardon, to adhere to any false statement he might have made in the first instance to have obtained that pardon, with a view of screening himself from prosecution. Several instances have been brought to the notice of the court, wherein false evidence has been given on persons receiving a pardon, and afterwards recanting; if a witness of this description were to be subjected to prosecution in failure of establishing the fact, as the condition under which he first deposed to the crime of another, perhaps an innocent person, he would naturally, to save himself from penalty, adhere to his first false statement, and thus an innocent person might suffer. It cannot be doubted that it were better that many offenders should escape punishment rather than that one innocent should suffer, and, under these circumstances, the judges are of opinion, that further legislation on this subject is unnecessary and inadvisable.

6. The only other subject which would appear to call for any remark in the officiating secretary's letter of the 31st December last, is that contained in the 3d paragraph, relative to the extent of penal jurisdiction to be entrusted to natives; and on this subject a report was made, under date the 13th July 1837, to the Indian Law Commission; the further report, promised in the 2d paragraph of the acting register's letter of the 8th May last, to your address, is under preparation, and will be shortly despatched.

I have, &c.
(signed) *A. Spens*,
Acting Deputy Register.

Bombay Sudder Foujdaree Adawlut,
5 June 1839.

(True copy.)
(signed) *J. P. Willoughby*,
Secretary to Government.

MINUTE by the Honourable *A. Amos*, Esq.; dated 16 July 1839.

Leg. Cons. 29 July 1839 No. 6.

I DO not think that there is any thing required to be done upon this communication of the Bombay Judges.

I do not understand the judges. Our Act XV. of 1838 has the effect of rendering an accomplice an admissible witness, whether he has or has not a certificate of pardon, and whether the pardon be conditional or not; it is for Government to judge what kind of pardon they will give; but before an Act, whilst the Bombay Regulation (repealed by our Act) required a certificate of pardon before the accomplice was admissible as a witness, it was material to inquire whether the Sudder Court had ruled that the certificate must be that of a free and absolute pardon; since the Act, such inquiry is needless.

If I recollect right, we inquired whether a part of a long communication sent to us (which part related to pardons of accomplices), was not set at rest by Act XV. of 1838? The answer to this question, which we now receive, is, perhaps, not very much in point; but as the judges do not call for legislation, we may, I think, let the correspondence as to this matter terminate.

16 July 1839. (signed) *A. Amos.*

(No. 2820 of 1839.—Territorial Department, Revenue.)

From *L. R. Reid*, Esq., Acting Chief Secretary to Government of Bombay, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India; dated 10 September 1839.

Leg. Cons. 14 October 1839. No. 15.

Sir,

I AM directed by the honourable the Governor in Council to acknowledge the receipt of your letter, No. 362, dated the 10th June last, and to transmit, for the

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purpose of being laid before the honourable the President in Council, the accompanying copy of a letter from the register to the Sudder Foujdaree Adawlut, dated the 29th July last, regarding the draft Act, depriving collectors and assistants of the extraordinary magisterial powers they now possess, of punishing their native officers for certain offences.

2. In reference to paragraph 3 of your letter, I am desired to state, that it was not the intention of this Government to propose any alteration in respect to the jurisdiction exercised by session judges under existing Regulations, and that the Governor in Council therefore prefers the draft (A.) with the proposed proviso, which will be an improvement, inasmuch as it will remove all doubts as to the magisterial powers to be exercised by collectors and their assistants over the offences therein specified.

I have, &c.

(signed) *L. R. Reid*,
Acting Chief Secretary.

Bombay Castle, 10 September 1839.

(No. 1295 of 1839.—Territorial Department, Revenue.)

Leg. Cons. 14 October 1839. No 16. Enclosure.

From *P. W. Le Geyt*, Esq., Register Bombay Sudder Foujdaree Adawlut, to *L. R. Reid*, Esq., Acting Chief Secretary to Government, Bombay; dated 29 July 1839.

Sir,

I AM directed by the judges of the Sudder Foujdaree Adawlut to acknowledge your letter of the 11th instant, No. 2267, with enclosures, communicating the sentiments of the Government of India on the draft Act for taking away from collectors as magistrates, and assistant collectors as assistant magistrates, the extraordinary powers which they now possess of punishing their native officers for certain offences.

2. In reply, I am instructed to state, in reference to the 2d, 3d and 4th paragraphs of Mr. Grant's letter, that the provisions suggested in the draft Act handed up, under date the 27th April last, for the retention, notwithstanding, of the ordinary penal jurisdiction of collectors as magistrates, and assistant collectors as assistant magistrates, without making similar provision for the ordinary penal jurisdiction of session judges, arose from the probability that magistrates might consider their penal jurisdiction, in regard to such offences referred to, as altogether abrogated, it was not considered necessary to make a similar provision for the session judges, as their absolute penal jurisdiction as to the full extent of the punishment provided. The judges direct me to remark here, that this law was made where these judges as "criminal judges" had not such full powers; but these were increased by Regulation III. of 1830, and which Regulation is quoted by you as conferring the full authority to imprison to the full extent which the law allows, without reference to this court; but herein you appear to have fallen into error, as this Regulation provides for the functions of sessions judges, as well as those of criminal judges and courts of circuit, as provided for in Regulation XIII. of 1827, and according to the rules prescribed in Regulation XXX. of the same year; in section 3 of the last-mentioned Regulation, clause 2, the absolute penal jurisdiction is confined to seven years' imprisonment, beyond which the confirmation of the Sudder Foujdaree Adawlut is required.

3. The proviso added to the draft (B.) would, I am desired to observe, prevent the chance of any doubts arising on the part of the local authorities, and under this view it might be as well to include it in the Act.

I have, &c.

(signed) *P. W. Le Geyt*,
Register.

Bombay Sudder Adawlut, 29 July 1839.

(True copy.)
(signed) *L. R. Reid*,
Acting Chief Secretary.

(No. 536.)

Leg. Cons. 14 October 1839 No. 17.

From *J. P. Grant*, Esq., Officiating Secretary to Government of India, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general; dated 14 October 1839.

Sir,

In continuation of my letter, No. 343, dated the 3d June last, I am directed by the honourable the President in Council to forward to you, for submission to the Right honourable the Governor-general of India, the accompanying copies of papers as noted in the margin, with draft of Act marked (A.) with its proviso, appended to the letter to the acting chief secretary to the Government of Bombay, dated the 10th June last, which has been approved by that authority, on the subject of depriving collectors and assistants in the Bombay Presidency of the extraordinary magisterial powers they now possess of punishing their native officers for certain offences.

Letter from Acting Chief Secretary to the Government of Bombay, dated 2 May 1839, with Enclosure.
Letter from Acting Chief Secretary to the Government of Bombay, dated 10 June 1839.
Letter from Acting Chief Secretary to the Government of Bombay, dated 10 September 1839, with Enclosure.

2. If the right honourable the Governor-general approves of the proposed enactment, you are requested to procure the assent of his Lordship, as required by sect. 70 of the Charter Act, to its being passed.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

Fort William, 14 October 1839.

Leg. Cons. 25 Nov. 1839. No. 1.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India; dated 30 October 1839.

Sir,

I have the honour to acknowledge the receipt of your letter, No. 536, dated the 14th instant, with its enclosures, and, in reply, I am desired to enclose the Governor-general's assent in the usual form to pass into law the proposed Act, limiting the powers of collectors as magistrates, and assistant collectors as deputy magistrates, in certain cases, of the Presidency of Bombay, its provisions having been approved by his Lordship.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India with the Governor-general.

Simla, 30 October 1839.

Simla, 30 October 1839.

Leg. Cons. 25 Nov. 1839. No. 2. Enclosure.

I do hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act for the limitation of the powers of collectors as magistrates, and assistant collectors as deputy magistrates, in certain cases, under the Bombay Presidency, received from the honourable the President in Council in Mr. Officiating Secretary Grant's letter of the 14th instant.

(signed) *Auckland.*

Act No. XXV. of 1839.

Leg. Cons. 25 Nov. 1839. No. 3.

Passed by the honourable the President of the Council of India in Council, on the 25th November 1839.

An Act for the Presidency of Bombay, limiting the powers of Collectors as Magistrates, and Assistant Collectors as Deputy Magistrates, in certain cases.

It is hereby enacted, that Regulation IV. of 1831 be repealed, and that clause 4, section 11, and clause 3, section 27, of Regulation XVI. of 1827; clause 4, section 16, of Regulation XVII. of 1827, and clause 2, section 8, of Regulation XII. of 1827, of the Bombay code, so far as they relate to the penal jurisdiction of collectors as magistrates, be repealed; provided always, that the offences specified in the said sections, viz., sections 11 and 27 of Regulation XVI. of 1827, section

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tion 16, of Regulation XVII. of 1827, and section 8 of Regulation XII. of 1827, shall be cognizable by magistrates and assistant magistrates, under the general powers which are or hereafter may be vested in them by the Acts and Regulations applicable to the Bombay Presidency.

(No. 2634 of 1839.—Judicial Department.)

Leg. Cons. 21 Oct. 1839. Nov. 13.

From *L. R. Reid*, Esq., Acting Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India in the Legislative Department; dated 3 October 1839.

Sir,

With reference to the 3d paragraph of Mr. Secretary Willoughby's letter, dated the 13th May last, No. 1347, I am directed to transmit to you, for submission to the honourable the President in Council, copies of a letter from the register of the Sudder Foujdaree Adawlut, dated the 8th August last, and of its enclosures, communicating the opinions of the several judges and magistrates under this Presidency in regard to the proposition to vest the native judicial functionaries with penal jurisdiction, and convey the request of the honourable the Governor in Council, that the subject may be referred for the consideration of the Indian Law Commission, if his honour should deem that measure advisable.

I have, &c.

(signed) *L. R. Reid*,
Acting Chief Secretary.

Bombay Castle, 3 October 1839.

(No. 1396 of 1839.)

Leg. Cons. 21 Oct. 1839. No. 14. Enclosure.

From the Register of the Sudder Dewannee and Sudder Foujdaree Adawlut; dated 8 August 1839.

Sir,

With reference to the subject of vesting our present native judges with criminal powers, a report on which was promised in the 2d paragraph of the assistant-register's letter of the 8th May 1838, No. 162, on a call made in your letter of the 15th of January 1838, No. 141, para. 2, I am directed to forward the opinion of the judges and magistrates of this Presidency, as contained in the accompanying summary, together with the reports whence it has been framed.

2. From the documents it will be observed, that, with the exception of the judges of Surat, and of the Conkan, the detached assistant judge at Dhoolia, and the magistrates of Surat, Rutnigerie and Nuggur, all are more or less opposed to the measure; the judges, generally, considering that the duties at present imposed upon the native functionaries are quite sufficient to occupy the whole of their time. To this point I am directed to request particular attention, as the original cause of this reference was founded upon the remark contained in the 10th paragraph of the Judicial Commissioner's Circuit Report, dated 29th of November 1834. He therein stated, in allusion to the duties of the native judges (commissioners), that they "have no very arduous duty to perform, and their labours might be increased without inconvenience; for instance, if at any time it should be thought advisable to vest them with a part of the administration of criminal justice, their time must be considered as abundantly equal to it."

3. This opinion particularly referred to the native commissioners of the Poonah and Ahmednuggur zillahs, the districts comprised within the circuit of the Judicial Commissioner. In opposition to the opinion formed in 1834, and of the value of which there can be no doubt, the judges would respectfully beg the attention of Government to the opinions of the judges of these districts in August 1838. The Poonah judge considered the measure quite impracticable, unless the present number of native officers was increased; their present duties are amply sufficient to occupy their time. The judge of Ahmednuggur considers the present duties are so heavy, that the native judicial officers could not perform any increase to them.

4. From this it may be inferred, that the duties of the commissioners have increased since 1834; and the judges are of opinion that the principal, and indeed

only

only objection to vesting our present native civil functionaries with criminal powers, is their heavy duties, so that, if the system were introduced generally, a considerable increase to the number of native judges would be required, with their respective establishments.

I have, &c.

(signed) *P. W. Le Geyt*,
Register.

Bombay, Sudder Dewanny and Sudder Foujdaree Adawlut, 8 August 1839.

SUMMARY of the Reports received from the Zillah Judges and Magistrates, on the subject of conferring Criminal Jurisdiction on the Native Judicial Functionaries.

Is of opinion that it would be very advantageous, and the revenue officers would be relieved from police duties, and the native functionaries have sufficient leisure to attend to both duties. — Surat Judge.

Thinks it should only be conferred on the native judicial officers at the Sudder station. — Broach Judge.

Would not recommend the native judicial officers being entrusted with criminal jurisdiction, but considers that, with the exception of the Sudder station, they would have time to attend to both duties, should it be determined to grant it them. — Ahmedabad Judge.

Advocates the system of their being invested with criminal jurisdiction, but thinks there are few districts in which the native judicial officers would have leisure for the double duty. — Conkan: Tannah Judge.

Considers, that if criminal jurisdiction is to be granted to any class of natives, the judicial officers would be the most competent persons. Would not advocate the system at present, in consequence of the intended change by the new penal code being introduced. Thinks they would not have time to attend to these extra duties. — Rutnagherry Judge.

Conceives the measure quite impracticable, unless the present number of native officers is increased; their present duties are amply sufficient to occupy their time. — Poonah Judge.

Considers the time of the native officers fully occupied, and would not burden them with additional duties. — Sholapore Judge.

Is of opinion that the present duties are so heavy, that the native judicial officers could not undertake any further duties. — Ahmednuggur Judge.

Considers the measure of investing the native judicial officers with crimina jurisdiction one of considerable importance, and approves of it, but thinks that they would have "sufficient time left for every requisite purpose;" and suggests that the system have a year's trial. — Dhoolia Judge.

Is strongly adverse to the measure, as the native officers could not perform both criminal and civil duties. — Dharwar Judge.

Collectors and Magistrates.

Sees no reason why the native judicial officers should not be vested with authority to try parties committed by the district officers. — Surat.

Considers the plans generally impracticable; but thinks that it might be adopted in large towns, where the police duties are very heavy. — Broach.

Is of opinion that the conferring criminal jurisdiction on the native judicial officers, would not relieve the collectors' department from a part of their duties, and questions whether they would find time for these extra duties. — Kaira.

Considers the powers of the native judicial officers should rather be lessened than increased, and thinks that granting them these extra powers would occasion incalculable evils. — Ahmedabad.

Would relieve the collectors and assistants, but thinks there are objections to bringing the revenue and judicial establishments into immediate contact; and — Tannah.

whilst any portion of the criminal administration remains with the collectors, its partial transfer would not be advantageous.

Rutnagherry. Conceives that it would be attended with advantage if the magisterial authorities were empowered to apprehend and convict, but not to prepare the cases; it would not afford relief.

Poonah. Granting to native judicial officers penal jurisdiction, would not relieve the magistrate, though it might in some measure the mamlutdars. The inconvenience would more than counterbalance the advantage; many of the moonsiffs have already sufficient to do.

Sholapore. Conceives that it would only be advisable within the limits of the principal towns, which would relieve the mamlutdars of a portion of their duties.

Ahmednuggur. The measure would not be advantageous, if the present number of native judicial officers was not increased. If they were increased, considers that they might be entrusted with penal powers.

Kandeish. Is of opinion that much advantage would not be derived from the arrangement, particularly as the officers of the Bheel corps have magisterial powers.

Nassick. Can see no reason why the native judicial officers should not have criminal jurisdiction, presuming them to be as competent as mamlutdars to investigate offences, but much would depend upon the time and attention the judicial officers could devote to these extra duties; if it is intended simply that cases prepared by the mamlutdars should be tried by them, the measure would be decidedly disadvantageous. If they are to be almost a separate establishment, it would render the administration of justice more speedy.

Dharwar. Would be desirable to relieve the collectors' department of part of their duty; is prepared to recommend the remedy proposed in the court's letter. Considers the measure could only be carried into execution at considerable expense, and, therefore, is averse to it.

Belgaum. Would be better to increase the number of talookas, than to allow moonsiffs to interfere with police details; and considers, with his assistant, that the revenue and police duties should be retained by the mamlutdars. The introduction of a divided authority would create difficulties.

(signed) *H. Spens,*
Acting Deputy Register.

From *G. L. Elliot,* Esq., Session Judge, to *P. W. Le Geyt,* Esq., Register to the Sudder Dewanny and Sudder Foujdaree Adawlut, Bombay; dated 23 July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 977, dated the 4th instant, and to offer the observations you request me to make on the measure therein suggested.

I consider that many decided advantages may be derived from conferring criminal jurisdictions on the native officers presiding in the Courts of Adawlut. By this arrangement the revenue officers, relieved entirely from police duties, will have every leisure for attention to the peculiar avocations of this department.

I would recommend that the moonsiffs in the districts should in every respect exercise the functions of district police officers, with extended powers. They should forward to the session judge all such persons as are accused of offences which they would not be empowered to try, and I would suggest that the session judge may delegate to the principal Sudder Ameen or to the Sudder Ameen, the decision of such cases as he may think proper. Thus the collectors' department would be entirely relieved from magisterial duties.

Respecting the extent of penal power that it might be desirable to entrust to these officers, I would confer on them authority to imprison for six months, to impose a fine as far as 100 rupees, to adjudge to detention in the stocks for 24 hours, or any of these punishments combined; such sentences being in all cases liable to be annulled or mitigated, upon review by the session judge.

To

To the principal Sudder Ameen, I would delegate the authority now exercised by the assistant session judge, as provided for in Regulation XIII. clause 3, 1827, leaving to Government to grant at its discretion the intended powers noticed in clause 4.

To the Sudder Ameen I would give the power of the magistrate, as provided by Regulation IV. section 3, 1830, leaving to the session judge to grant, at his discretion, the extended powers I have now proposed to be vested in the principal Sudder Ameen.

Another benefit that will result from the suggested arrangement, is the saving of trouble and expense to those witnesses who are now compelled to attend trials at the hoozoor, and this advantage would be very extensively felt, as the greater number of offences for trial are of that minor description which would, according to this plan, fall under the cognizance of the native functionaries in the districts.

Respecting the manner in which the moonsiffs are to hand up for trial such cases as exceed their powers, I would propose that they conduct and record their proceedings in the form prescribed in section 14, Regulation XII. of 1827.

As a means of preventing errors in their proceedings, or if committed, of speedily detecting and rectifying them, I would suggest that weekly reports of cases tried by the officers be forwarded to the session judge, who may then be enabled to discover any mistake or irregularity.

I am of opinion, that the time of the native functionaries is not too fully occupied to allow them leisure for these new employments, or that the performance of them would at all interfere with the just and faithful discharge of their present very important duties.

The assistant session judge at Broach has not yet favoured me with his opinion, but when received, his letter shall be transmitted.

I have, &c.

23 July 1838. (signed) *G. L. Elliot*,
Session Judge.

From *G. L. Elliot*, Esq., Session Judge, Surat, to *P. W. Le Geyt*, Esq., Register to the Sudder Dewanny and Sudder Foujdarree Adawlut; dated 25 July 1838.

Sir,

In reference to the concluding paragraph of my letter dated 23d instant, I have the honour to forward the accompanying letter from my assistant at Broach, containing his opinion respecting the conferring of criminal jurisdiction on the native officers presiding in the Courts of Adawlut.

I have, &c.

Court of Adawlut, Surat, (signed) *G. L. Elliot*,
25 July 1838. Session Judge.

From *W. Richardson*, Esq., Assistant Judge and Session Judge, Broach, to *G. L. Elliot*, Esq., Judge and Session Judge, Surat; dated 23 July 1838.

Sir,

In acknowledging the receipt of your letter of the 12th instant, accompanied with a copy of a circular from the Sudder Dewanny and Sudder Foujdarree Adawlut, dated the 4th of this month, I have the honour to inform you, that with the view of relieving the collectors' department from a portion of their duties, I am of opinion that it would be advantageous to confer criminal jurisdiction on the native officers presiding in the Courts of Adawlut, but only at the Sudder station. As regards the pergunnahs, I think that the duties would be much better executed by the commavisdars, in consequence of the collector or his assistants being constantly in the districts, which must in some measure prevent any attempt at oppression.

I think the officers might be entrusted with the powers of imposing a fine of 30 rupees, and to three months' imprisonment.

In this zillah, as there are only two native officers stationed in the districts, I do not imagine that any great benefit would be derived by the parties, by

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avoiding the necessity of a journey to the hoozoor, as it would frequently happen that the journey to the station of the native officer would be nearly as far as the hoozoor, and I believe the parties would rather have the case investigated by the latter than the former.

The mode at present in use, according to Regulations of 1827, appears to be the best. in which cases should be committed for trial before the native judges.

I think the best check to remedy errors in oppressions would be, that the proceedings in every case in which a sentence was passed of a fine about 100 rupees, or to imprisonment beyond one month, should be sent for confirmation to the assistant judge.

I think that the native officers would have leisure sufficient to enable them to decide the criminal cases which might be brought before them.

I have, &c.

(signed) *W. Richardson,*
Assistant Judge and Session Judge.

Broach, Adawlut, 23 July 1838.

From *J. G. Lumsden*, Esq., Acting Judge and Session Judge, Ahmedabad, to the Register to the Sudder Dewanny and Sudder Foujdaree Adawlut, Bombay; dated 9 August 1838.

Sir,

The Court's circular, No. 977 of 1838, dated 4 July 1838, resolves itself into the following queries. I shall endeavour to reply to each in detail.

1st. The advantage to be derived from conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut.

The essential condition of any advantage must be the pure dispensation of justice; and perhaps, next to justice itself, the conviction on the mind of the people of its being firmly and fairly administered. Let us look then, first, to the present native administration of civil justice, before we confer criminal powers. Is it satisfactory, as a whole, to ourselves? Is it not generally distrusted by the people? The latter, I think, will be conceded, if not the former. And here I do not ask whether we can bring legal proof of corruption, or whether we suppose its ill effects to be dissipated by the right of appeal; but whether we ourselves have reason to believe that it does not exist, and that justice is impartially and purely dispensed by the moonsiffs and Ameens in our civil courts? For my part, I must humbly state I am not so sanguine. I see around me ministers of justice, chosen, sometimes for their talent, sometimes from motives of patronage, generally, with a very vague and undefined knowledge of their character for honesty, or intrinsic value for it; their salaries very trifling, their temptations infinite, and under a foreign superintendence, which, however zealous it may be, is yet dispensed at distant points, and may be effectually baffled by common-place talent for intrigue.

In vain, taking a general view, do I wish to trace an honesty, which, while the present system is upheld, reason cannot anticipate. On the contrary, negative evidences there exist in abundance; that though perhaps our system is nearly as good as circumstances will admit, though I fear of consequences, prevents glaring delinquency, and may even frequently ensure fair decision that the native judicial character is not immaculate or to be depended on. Among these evidences, not the weakest to myself is the fact, that in my short judicial career, I have found three instances of native functionaries, whose characters as judicial officers were invariably estimated as highly by natives themselves as those of their colleagues, distrusted and impugned. For this proves the exercise of a certain discrimination.

If, then, what I supposed to be a true picture of the present state of native judicial administration in civil matters, if our records are burdened with petitions against its justice, and parties almost daily are seen, out of distrust and despair of justice, to visit the Sudder station from long distances to secure the decision of their suits, where they conceive they have at least a chance of impartiality, should we not pause before we ventured to confer on these officers powers of inflicting punishment on the person, as well as of amercing the property of the subject. What advantages in the abstract can we expect from the mere imposition of onerous duties, and the mere conferring formidable addition of power on such a class?

class? If error now exists, can we hope that by increasing the temptation to err, we shall lessen the evil?

Under such a state of things, then, I fear immediate advantages are not to be expected; what appear as such would be far more than counterbalanced by co-existent disadvantages. On the one hand, access to justice would be easier, because nearer to the ryot's door; a small saving would accrue to Government, from the payment of batta to witnesses; the latter would not be subject to vexatious calls upon their time in travelling to the Sudder station, or to loss from the interruption of their daily agricultural pursuits; the collectors' department would be in a measure relieved, which in its turn would lead to an improved revenue, in consequence of more undivided attention. On the other hand, I foresee intrigue increase to an alarming extent, the power to repress it lessened, personal liberties infringed under colour of false evidence, and general dissatisfaction, leading to as general appeal to the judge, on whom the weight would ultimately fall, by all or most of the trials coming under his cognizance. It is suggested whether these numerous appeals would not be found a serious interruption to his duty.

This I consider the natural result of merely transferring criminal powers to the moonsiffs and Ameens, as they are appointed at present.

2. How far such a measure may appear to be required with a view of relieving the collector's department, it is easier for the collector to answer than myself. That any relief would improve the efficiency of the revenue branch, I have observed elsewhere. I have taken it for granted, from the general tenor of the circular, although nowhere expressly stated, that the proposed relief is not to extend to his magisterial duties, and that the power of committal, and the usual period of punishment assigned to district police, will still be exercised by the commavisdar and mamlutdars under the collectors, as chief magistrate. This naturally leads us to consider the working of the present system, and so in alteration of it, and in furtherance of the first obvious object of such a measure, a partial relief to the collector's department, to decide the extent of penal powers it might be advisable to entrust to the moonsiff, if such a measure be resolved upon.

3. At present, then, we find that the magistrate's jurisdiction, in his judicial capacity extends from 20 days' imprisonment, the period to which commavisdars are confined, unless specially invested with increased powers, Regulation XII. section 42, clause 2, 1827, to one year's imprisonment* with hard labour and fine; to vest less power than this in each moonsiff, would in my opinion be useless, and only tend to embarrass the magistrate. Admitting this, I would sketch the following outline of a new system. The duties of the collector should be confined as magistrate to the superintendence of police, the investigation of offences and the committal of offenders. Reg. IV. 1830.

On the moonsiffs I would confer powers to imprison for one year with hard labour, and fine. To Sudder Ameens, as at Dholka and Kavia, 18 months. The next step in authority is the power vested in the assistant judge at the Sudder station, who may, as at present, imprison for two years, &c. The commavisdars should be empowered to commit direct for trial before the moonsiff or Sudder Ameen, as the case may be, all charges, the punishment for which is confined to Regulation within these limits. On the other hand, to check any connivance between these officers, the commavisdar should make weekly returns to the magistrate, reporting all the charges then under investigation before him, and give an abstract of each in a separate column. In reply, he should receive from the magistrate a weekly return, indicating the cases which, in his opinion, should be committed for trial before the moonsiff, and such as ought to be handed on for trial before the session judge through the medium of himself. Such a system would provide for all the cases, and many more which the magistrate now investigates and decides, offences not of an aggravated nature; but in extreme cases, punishment by Regulation to a far greater extent than the magistrate is authorized to inflict. On the other hand, these returns would prevent an abuse of their powers by the native committing and trying officer, by leaving it to the discretion of the magistrate himself to decide, on reference to the commavisdar abstract, what were the charges the punishment of which, if proved fairly, came within the powers vested in the Ameens. But certain crimes of great atrocity, and which should be distinctly specified (such as the class of offences involving loss of life, &c.), ought to

* Except in cases of official misconduct, under exaction, &c., where the power of a magistrate extends to three years' imprisonment. Regulation XVI. section 11, clause 4, and Regulation XVII. section 16, clause 4, 1827.

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to be as a standing rule handed up by the commavisdar to the magistrate, for the purpose of the parties being committed to stand their trial before the session court, that no delay whatever might occur between the completion of the proceedings by the district officer and the committal of the accused.

4. In all these cases so tranferred, the ryot would doubtless feel much less inconvenienced by having justice administered almost at his door, than by the present system, and the necessity he is now under of visiting the hoozoor; and a reference to the criminal judge's calendar, as well as to the magistrate's, would most certainly prove that I have included in the above range the greater proportion of cases submitted for trial. But it is alike the true interest of the governed and the Government, that the former should suffer double the inconvenience which he does at present, rather than that justice should be polluted in the most important of its functions, the suppression of crime. I have expressed my opinion perhaps too freely on this subject in the beginning of this present communication; my views may be, and probably are, erroneous; but I hope that, in stating them at such length, I shall not be accused of having abused the valuable privilege which I possess of addressing the able and experienced judges of the highest court in the Presidency. I hope so, not for the value of the opinions, but because called upon to speak on a subject of interest to thousands. I conceive it my duty to say what I really believe, without disguise. Supposing, however, that the proposed change is really to become law, it only remains for me to point out such checks as occur to me against the abuses to which it is liable. First and foremost, then, I would advocate an increase in the pay of the new administers of justice. This is no more than is right and reasonable, and would give them less excuse for misusing their new powers, in the same degree that it made the punishment of such abuse more severe. Another positive check has been already mentioned, in the proposed weekly return of district magistrates. The power of appeal to the judge, granted by Regulation, would also prove a very material check; but besides this, weekly calendars would show at one glance the disposal of all cases committed for trial before the moonsiffs, including dates of commitment, and any arrears. They never should be permitted to be in arrear, but should be forwarded weekly for inspection, and the judges should be required to report periodically to the Sudder Adawlut on the general state of justice under the new administration. Apparent errors he would of course take measures to have rectified by the Ameens, but if these were suspected to originate in improper motives, he would bring them to the notice of the court, and forward, with his opinion, the proceedings on which such suspicions were grounded. The judge should also be encouraged at intervals to depute his assistant to proceed for a limited period to any station where a moonsiff held his court, to receive petitions and to make a thorough investigation, and report to his superior of the state in which he found the administration of justice, civil as well as criminal. I consider that two years should never elapse without such a domiciliary visit, either by the judge or his assistant, in any moonsiff's jurisdiction; and I am of opinion that these visits should not be fixed, and therefore expected to occur at certain periods.

The judge himself should alone notify to his assistant the time as well as the direction in which he was to commence inquiries; at such times, if not more frequently and regularly, the duftees of the Ameens would be submitted to the strictest scrutiny; the case should of course be committed by the comavisdar as perfect as he could make them; and another species of check which has engaged my attention may be thought inapplicable, but as it is suggested by no less an authority than Rammohun Roy, I make no excuse for mentioning it. It is the introduction of the punchayet or jury system, under particular restrictions, and will be found in his expositions of the working of the judicial and revenue system, before the Home Authorities. His plan is, that "in all the towns and places within the zillah where justice is administered, lists should be made out yearly, and kept under the sanction and seal of the judge, of all persons competent to serve on juries;" and he states his conviction, "that as three members would be sufficient for a sitting, this plan would not impose any heavy duty on the respectable portion of the native community, but that daily three times the number required for sitting on a trial should be summoned, and the persons actually to serve chosen by lot in open court. This jury should be kept apart, and required to decide without separating;" and further, he insisted on, in my opinion, that the lists be numbered, that the same persons should not be balloted for two successive times, and that daily records should be kept of those balloted for, and of the juries who actually served. If not balloted for, juries should serve by threes in their turn,

but

but the balloting system is preferable, as it would render any official misconduct more complicated and unprofitable, in the same proportion it increased the chance of detection. Their opinions would be invariably recorded, but of course it would remain with the moonsiff to condemn or acquit. If it were thought necessary to encourage such a system, it could be done by the grant of some peculiar privileges, or by a trifling daily allowance to the sitting members. The judge would of course have the power to revise these lists, copies of which would remain with him, and to exclude from the right to serve on juries such as were declared not eligible to serve, owing to a want of character; such exceptions might be easily placed in the position of an inferior class.

As, for example, for being declared not eligible to certain employments, to act as mooktars, &c. &c.

With reference to the 2d paragraph of your letter, I am of opinion that a native moonsiff in any out-station within this zillah, will have ample time, if industrious, for the discharge of his double duties; and with regard to the Sudder station, I see no necessity whatever for investing them with other powers and duties than they exercise at present. The latter are sufficiently onerous, and should not be interfered with.

I have, &c.
(signed) *J. G. Lumsden*,
Acting Judge and Session Judge.

Ahmedabad Court of Adawlut,
9 August 1838.

From *B. Hutt*, Esq., Acting Session Judge, Conkan, to the Register of the Sudder Foujdaree Adawlut, Bombay; dated 31 July 1838.

Sir,

In acknowledging your letter of the 4th July 1838, I have the honour to observe, that where the native judges are persons of sufficient qualification, the conferring on them criminal jurisdiction would be a great advantage to the people, for, by diminishing so materially the inconvenience and expense of attending the court in which the trial of offences is held, and the promptness of decisions, persons may be expected more readily to come forward as prosecutors, and to lend assistance in the detection and apprehension of culprits, which will tend materially to check crime. It would also very greatly relieve the magistrate and his assistants, and produce a great saving to the State by reducing very materially the charge for batta to witnesses.

There are very few districts, however, in which the native judges would have leisure, their civil duties at present occupying their whole time; their number would therefore require to be increased, but the saving above noticed would, in a great measure, meet this additional charge.

It is a measure, however, which I fear cannot at present be generally adopted, and great caution will be requisite in the selection of qualified persons.

The extent of penal powers to be conferred on them should not at first exceed imprisonment for two years, with fine, the period of imprisonment in commutation of which being included in the two years. This will embrace all trifling cases of robbery, assault, fraud, receiving stolen goods, trespass, &c.

The mamlutdars and mhalkurries might commit persons for trial before the native judges, in the same way as the magistrates and their assistants do now to the session court.

All cases decided by the native judges should be forwarded for confirmation to the session judge, or senior assistant session judge, at the detached station, who should issue the warrant for the enforcement of any sentence of punishment.

The native judges have not the means of securing persons charged with or convicted of criminal offences. The mamlutdar should therefore be charged with this duty, bringing them up when required for trial before the court, and forwarding them on to the Sudder station after conviction.

The efficiency of this system will entirely depend on the control exercised by the session judge, and to render this effectual, it will be necessary that he should visit occasionally the various local courts, for which fixed times should be laid down.

I have the pleasure to enclose the report from my assistant at the detached station.

I have, &c.
(signed) *B. Hutt*,
Acting Session Judge.

Conkan Court of Adawlut, 31 July 1838.

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From *Henry Brown*, Esq., Acting Senior Assistant Judge and Session Judge, Rutnagherry, to *Benjamin Hutt*, Esq., Acting Judge and Session Judge, Tanna; dated 25 July 1838.

Sir,

1. I HAVE the honour to acknowledge copy of a letter, No. 977, of 1838, from the register of the Sudder Dewanny and Sudder Foujdaree Adawlut, dated the 4th instant, addressed to the judges and session judges of Tanna, Surat and Ahmedabad, and transmitted by you for my sentiments on the points of inquiry therein contained.

2. In offering my opinion on the advantages to be derived from conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut, I beg to observe, that if this jurisdiction is to be invested in any class of natives, these judicial functionaries would be the most competent to undertake it; the Sudder Ameen and the greater number of moonsiffs in the zillah have been individuals selected from situations of responsibility under Government, and connected with the Courts of Adawlut, and have therefore acquired a degree of judicial experience; but I should be unwilling to consider it advantageous at the present period to invest them with criminal powers, in consequence of the change which is about to take place in this branch of the law, by the introduction of the new penal code.

3. In regard to the second point; how far such a measure appears required, with a view of relieving the collectors' department from a portion of their duties. This I should conceive would depend upon whether the police duties are to remain in their present state; if so, all the primary investigations and preparations of cases of prisoners must be performed by the mhalkurries and mamlutdars previous to their committal to the moonsiffs; and the only relief which I can perceive, will be experienced by the collector, his assistants and the hoozoor establishments.

4. The extent of penal powers, which it might be advisable to entrust to those officers, might be as follows:—

To the Sudder Ameen, to the extent of one year's imprisonment, with or without hard labour, and fine.

To the moonsiffs, to the extent of six months' imprisonment, with or without hard labour, and fine. In both instances sentences of above three months should be referred for confirmation to the head of the court within whose jurisdiction these officers are placed.

5. In the event of this measure being carried into effect, considerable relief will certainly be derived to parties in the districts, by their being prevented making a journey to the hoozoor; and I am confident, that owing to the inconvenience parties are put to by this, that many natives would sooner leave an offence unprosecuted than have the trouble of repairing to the hoozoor.

6. The mode in which cases might be committed for trial should be, I think, the same which is at present pursued in the magisterial department, when prisoners are sent up for trial to the Adawlut; viz., a paper of commitment, bearing separate columns, the number, the name or names of the prisoners, the offences, the date of apprehension, the witnesses on the part of the prosecution, the witnesses on the part of the defence, and the papers relating to the inquiry and the stolen property.

7. The checks to be imposed, that errors on the part of the moonsiffs may be known and quickly remedied, should be by petitions from the prisoner or prisoners, and returns made twice in the month of the criminal cases decided; viz., on the 15th and on the last day.

8. I have, with due deference, submitted my sentiments on the above points, but I wish that they may be viewed in an abstract manner; for there are difficulties which it will be necessary to set aside ere this innovation (I do not mean to apply this term in its unpopular sense) in the criminal branch of the law can be brought into operation. One of the difficulties I have briefly alluded to in the second paragraph, which is the anticipated supercession of the criminal Regulations by the introduction of the new penal code, as I should be led to apprehend incessant errors would be committed by these officers, from their incapability of comprehending the provisions of the new code. It seems to me that its working should first be understood, and made familiar to the minds of these individuals, before they are entrusted with criminal powers.

9. An

9. An increase in the establishments of the Sudder Ameen and moonsiffs, for the conducting of the extra duties, must necessarily take place, the transmission of prisoners to undergo their periods of imprisonment in the gaol, under a suitable guard of rangers and peons, must be provided for, as it may not be competent in the mamlutdar of a talooka to afford assistance in this respect at all times, in consequence of the services of these persons being required in revenue matters, and in escorting treasure.

10. It will be necessary to erect places of confinement at each seat of a moonsiff, for the purpose of enabling him to confine offenders who are sentenced to short terms of imprisonment, either for the offence itself, or in default of the payment of the fine awarded.

11. With regard to the 2d paragraph of the court's circular, I think that the present occupation of the native judges will be much interfered with should this new measure be carried into effect; and I have more reason to apprehend this in the Rutnagherry zillah, than probably what might occur in any other under this Presidency, provided wuthan suits are transferred from the collector's department, which I have every reason to suppose will be the case shortly. The judges of the Sudder Dewanny Adawlut, who have had these suits in special appeal before them, will be able to form an estimate of their intricacy, as well as the voluminous nature of the documents produced by both parties; and if the litigants are allowed to prefer their suits at the court of the moonsiff, instead of, as is the custom I believe now, at the collector's cutcherry, I am confident no description of claims will be more numerous than those connected with wuthans.

I have, &c.

(signed) *Henry Brown*,
Acting Sudder Assistant Judge and Sudder Judge.

Rutnagherry Court of Adawlut,
25 July 1838.

From *A. Bell*, Esq., Judge and Session Judge, Poonah, to the Register to the Sudder Dewanny and Sudder Foujdaree Adawlut, Bombay; dated 30 July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of the court's circular, No. 977, dated the 4th instant, requesting me to favour the judges with my sentiments as to the advantages to be derived for conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut; how far such a measure appeared required, with a view of relieving the collectors' department from a portion of their duties; the extent of penal powers it might be advisable to entrust to these officers; the benefit to be derived to parties by avoiding the necessity of a journey to the hoozoor; the mode in which cases should be committed for trial before the native judges; the checks to be imposed that errors on their part may be at once known and quickly remedied; and further requesting me to state how far I consider the present occupation of the native judges holds out the prospect of leisure on their part to do justice to their other very important duties. In reply, I beg to state, that unless it is intended to increase the present number of native officers under the Adawlut, I conceive the measure quite impracticable, as the present occupation of those officers holds out not the most distant prospect of leisure on their part to do any thing like justice to their other important duties. Indeed, had they less to do, what is now done would be far better done.

2. The whole period of my service having been passed in the judicial line, I am consequently totally ignorant of the extent of a collector's duties, and feel considerable difficulty in offering a satisfactory opinion on the measures proposed. Of this, however, there cannot be a doubt, that increased agency, both European and native, is much to be desired in every department of the service.

3. The extent of penal powers to be entrusted to these officers should not in the first instance exceed three months' ordinary imprisonment, and fine to the amount of 50 rupees. Their powers might afterwards be extended to six months' ordinary imprisonment, with or without hard labour, with fine to the amount of 100 rupees, should the system be found to work well; but I am inclined to think that these powers should never exceed the above limit.

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4. The benefits which parties would derive by avoiding the necessity of a journey to the hoozoor, is too obvious to require remark

5. Should criminal jurisdiction, however, be conferred on native officers, I know no better mode in which cases should be committed for trial before the native judges, so that checks would be imposed, that errors on their part might be easily discovered and quickly remedied, than by following the form now in use, and by adopting a similar return to that now furnished by the inferior authorities.

6. Copy of a letter dated the 10th instant, from my detached acting assistant, on this subject, is herewith forwarded.

I have, &c.
(signed) *A. Bell,*
Judge and Session Judge.

Poonah Court of Adawlut, 30 July 1838.

From *G. H. Pitt*, Esq., Acting Assistant Judge and Session Judge, to *Alexander Bell*, Esq., Judge and Session Judge, Poonah; dated 10 July 1838.

Sir,

In acknowledging the receipt of your letter of the 6th, forwarding a circular from the Court of Sudder Dewanny and Sudder Foujdaree Adawlut, calling for my opinion as to whether native judges, Sudder Ameens and moonsiffs are capable and able to undertake and superintend the police duties of the country, I have the honour to state, that I think their time is fully occupied in their present duties, without loading them with increased burdens; nor do I see exactly how this arrangement can be brought into operation.

I have, &c.
(signed) *G. H. Pitt,*
Acting Assistant Judge and Session Judge.

Sholapoor Court of Adawlut, 10 July 1838.

(True copy.)
(signed) *A. Bell,*
Judge and Session Judge.

From *H. H. Glass*, Esq., Session Judge, Ahmednuggur, to the Register of the Sudder and Foujdaree Adawlut, Bombay; dated 7 August 1838.

Sir,

1. I have the honour to acknowledge the receipt of the court's circular letter of the 4th instant, No. 977 of 1838, calling on me for my sentiments as to the advantage to be derived from conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut.

2. I beg leave, in reply to the 2d paragraph of your letter, to state, that the duties already required to be performed by the native functionaries of this department appear to me to be very heavy, and as it is in contemplation to transfer all the civil business now performed by the collector and his assistants to the Adawlut, I am of opinion that it would be impossible for them to undertake the magisterial business, and at the same time, do justice to their other important duties; being of this opinion, I do not think it necessary to make any remark in regard to the arrangements which would be required were such a measure to be carried into effect.

3. Herewith, I beg to hand up a letter from the senior assistant judge at Dhoolia, to be laid before the court.

4. Mr. Birdwood points out, as one of the advantages to be derived by the transfer of part of the magisterial duties to the native judges, that it would save parties and witnesses the trouble of coming to the hoozoor; but in this respect the proposed arrangement would make very little difference, as the assistant magistrates within the Ahmednuggur and Kandeish division are stationed the greater part of the year in the districts, and instead of going as they now do to them, they would have to appear before the moonsiffs.

5. In the 7th paragraph of his letter, the assistant judge states, that he considers that the moonsiffs could undertake the magisterial duties, and "that sufficient time would be left them for every requisite purpose." I differ in opinion with

with him on this point; for, generally speaking, they have quite enough business to occupy their time in two of the districts, Nundooliar and Buglan; the monthly average of suits decided last year was small (in the former 22, and in the latter 26); but in the other four talookas they averaged as follows: Maligaum, 39; Yaweeh, 58; Dhoolia, 67, and Erundole, 53; and when the civil suits are transferred from the collector's department, their duties will be very considerably increased.

6. Subjoined is a statement showing the monthly average of civil suits decided by the Principal Sudder Ameens, Sudder Ameens and moonsiffs in the Ahmednuggur divisions in 1837.

I have, &c.

Ahmednuggur Court of Adawlut, 7 August 1838.

(signed) *H. H. Glass*, Session Judge.

From *W. Birdwood*, Esq., Senior Assistant Judge and Session Judge, Kandeish, to the Judge and Session Judge, Ahmednuggur; dated 28 July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of the copy of the court's circular of the 4th instant, received 27th instant, addressed by the judges to the judges and session judges of Poonah and Ahmednuggur, and directed to be forwarded to the assistants of the detached stations for their opinions.

1. In reply, I have the honour to observe, as respects the 1st paragraph of that letter, as to "the advantages to be derived from conferring criminal jurisdiction on the native officers presiding in the courts of Adawlut," that I consider they may be classed under the three following heads:—

1st. Expedition and dispatch of the criminal cases which may come within their jurisdiction.

2d. A partial relief to the ryots, by dispensing with their attendance at the hoozoor, and also a saving to Government, in consequence of not having to defray the usual batta for the prosecutors' and witnesses' travelling expenses.

3d. The important consideration of punishing offences almost as soon as committed, and that, in most cases, within a short distance of the spot where the crime has taken place, thereby rendering the punishment much more effective; and these advantages would necessarily result from the offences being tried by the native officers, by the offenders being brought to justice on the spot, and without loss of time. I consider that the end of all punishment would be rendered far more effectual, as it is very desirable to shorten the length of period which elapses between the committal and trial. By this means a salutary and striking effect will be made by the expeditious mode in which justice is administered, and the public will have an opportunity of seeing that immediate punishment follows as a necessary consequence on the steps of crime. If the penal jurisdiction thus given is not abused, there would be much better opportunity afforded of obtaining the truth, provided that the native officers are strictly just, as it is a truism "male verum examinat omnis corruptus judex;" for although the European functionary must necessarily, from the course of his education, have better opportunities afforded him of weighing the evidence and drawing conclusions in his own mind as to the nature and effect of crime, better able to make a comparison of the contradictory evidence adduced, and to remark on the different discrepancies which may come to light, yet I think it very possible, from the very nature of things, that the native functionaries have more direct means of obtaining and eliciting the truth than Europeans possess; and notwithstanding that in English courts of law, where the machinery is of such an intricate nature, that these qualifications must necessarily have a very considerable effect, yet in our courts, where the administration is of a much less complicated and more simple nature, these superior powers of the mind may well be dispensed with, for the more important and efficient one of detecting crime and punishing offenders immediately and on the spot, thus affording less opportunity for collusion amongst the various parties concerned.

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2. Respecting how far such a measure appears required, with a view to relieving the collectors' department from a portion of their duties; I am not of opinion that the adoption of such a measure would be of considerable importance. As to effecting a saving in the time now devoted to magisterial business, and which, if criminal powers were granted to the judicial officers, might be rendered available for that of the revenue; as I conceive that, in all cases handed up by the magistrates to the judicial officers, it would be necessary for the magisterial department to examine those proceedings to see if there were just cause for committal, by which means there would not be much actual relief to them from their present duties as magistrates, as the very fact of examining and revising the cases would probably, in the long run, occupy quite as much time as if the cases had originally been prepared by the magistrates or their assistants.

3. As to "the extent of penal powers it might be advisable to entrust to these officers" I should say that, for the present, as a trial, one year's imprisonment might be considered the limit, subject to the controlling authority, but to the extent of three months their decision might be final; of course, if the system is found to answer, their powers can be extended, as deemed necessary.

4. Respecting "the benefit to be derived to parties by avoiding the necessity of a journey to the hoozoor;" I am of opinion that advantage would necessarily follow from the necessity of a journey to the hoozoor being avoided, and that more especially in the sowing season, when the services of the agriculturists can ill be spared without great loss to them, to say nothing of the trouble and length of the journey. I have no doubt that the injured parties would very often sooner drop all thoughts of prosecution, than be obliged to leave their home and families for a considerable length of time, in order to be present at the trial of the offenders, the distance which they have to go being generally very considerable. These disadvantages would, therefore, to a certain extent, be abolished, but not in the generality of cases, such as gang robberies, &c., and which are the most prevalent descriptions of crime in the zillah, as the parties would then, under any circumstances, be obliged to attend, as at present, to give evidence at the sessions.

5. As to "the mode in which cases should be committed for trial before the native judges;" I am of opinion that they should be committed for trial by the mamlutdars, according to a regular form, which might be furnished them by the magisterial department.

6. With reference to "the checks to be imposed, that errors on their part may be at once known and quickly remedied;" I consider that periodical returns being made of the criminal duties performed, the judges having the power of revising all their proceedings, would be sufficient to prevent any improper exercise of their increased powers.

7. As regards the question, "how far such extended powers would interfere with their present important duties?" Of course, the native functionaries would not have so much time to devote to the civil branch, but still I consider that sufficient would be left them for every requisite purpose; in fact, the checks now in operation would remain, and any neglect of duty would be immediately noticed.

In conclusion, considering the very important duties which these additional powers involve, I would respectfully recommend, that it would be desirable that the experiment should have a trial of one year, to see how it answers, at the expiration of which, such alterations and improvements may be made as the nature of the cases may seem to suggest.

I have, &c.

Kandeish Adawlut, Dhoolia,
28 July 1838.

(signed) *W. Birdwood,*
Senior Assistant Judge and Session Judge.

(true copy.)

(signed) *H. H. Glass,*
Judge and Session Judge.

STATEMENT, showing the Monthly Average of Civil Suits decided by the Principal Sudder Ameens, Sudder Ameens and Moonsiffs, in the Ahmednuggur Division, in 1837.

STATIONS.	NUMBER OF SUITS.	MONTHLY AVERAGE.
AHMEDNUGGUR :		
Principal Sudder Ameen	908	75
Moonsiffs at Sudder Station	819	68
Ditto of Jamkhair, was employed to reduce the file of Sudder Station	300	25
Sudder Ameen of Kurda	888	74
Ditto of Nassick	1,290	107
Moonsiff of Sinnir, was employed to reduce the file of Nassick	289	24
Ditto of Rohory	937	78
Ditto of Newassa	830	69
Ditto of Pattoda	760	63
Ditto of Sungemnair	734	61
Ditto of Sinnir	340	28
Ditto of Chandore	536	44
Ditto of Jamkhair	343	28
Ditto of Kurnulla	788	65
	9,762	

Ahmednuggur Adawlut, August 1838.

(signed) *H. H. Glass*, Judge.

JUDICIAL DEPARTMENT.—Criminal.

From *J. A. Shaw*, Esq., Session Judge, Dharwar, to *W. P. Le Geyt*, Esq., Register to the Sudder Foujdaree Adawlut, Bombay; dated 11 July 1838.

Sir,

IN reply to the court's circular of the 4th instant, requiring my opinion on the propriety or otherwise of assigning criminal duties to the native judges, I beg to be permitted to say, that I am strongly adverse to the measure; now that land-suits have been made over to the Adawlut, the same objection will lie to the employment of native judges on criminal duties, which has heretofore laid to the employment of mamlutdars on those duties; viz. the superabundance of other duties. The consequence, therefore, of such assignment would be, either that civil business would be neglected for criminal, or *vice versâ*.

The plan I would take the liberty to propose is, the establishment of a native magistracy; *i. e.* a native magistrate in each talooka, with powers equal to the assignment of one or two years' confinement (in the Madras Presidency the powers of Principal Sudder Ameens extend, I believe, to two years), with hard labour, and fine in proportion. I would give to each of these native magistrates a chowky or place of confinement, in which he might place prisoners sentenced to three months and under, and oblige him to forward all persons sentenced to a higher rate of punishment to the zillah gaol. I would oblige the native magistrate to send all his cases (after trial) to the session judge, and I would give the session judges, not only the power of mitigation and annulment, but, if circumstances rendered it specially necessary, the power of bringing the magistrate to trial, in any case where it was palpably evident that a punishment inadequate to the crime had been assigned from improper motives (I say this, because I fear the judges would object to giving the said prisoners a fresh trial). I need hardly add, I would give the native magistrates adequate salaries and adequate establishments.

As the recommendations I have made have not been called for by the judges, I have merely given a rough sketch of my system, and I trust that the judges will consider a sufficient apology for my work of supererogation, that I state my belief not only that the subject now before me is one of vital importance, and one which is daily painfully forcing itself on the attention of all constituted authorities, but further, that the direct saving to Government in batta to witnesses, and the indirect one of abolishing the necessity for compelling witnesses,

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on every trifling occasion, to travel long distances, and be absent for long periods from their homes and domestic duties, will counterpoise, at least, the direct call on the finances of Government for the expenses of such an establishment.

I have, &c.

Dharwar Session Court of Adawlut, 11 July 1838.

(signed) *J. A. Shaw*, Session Judge.

(No. 239 of 1838.—Judicial Department.)

From *W. C. Andrews*, Esq., Magistrate, Surat, to *C. Sims*, Esq., Acting Register to the Sudder Foujdaree Adawlut, Bombay; dated 11 December 1838.

Sir,

I HAVE the honour, in reply to your letters of the 4th July last, No. 977, and the 4th instant, No. 1854, to offer it as my opinion, that the police duties and jurisdiction of the magistrate and his district officers should remain as they are at present, that consequently, the primary investigation into, and preparations of all police cases should continue to be made by the district officers.

2. I think, however, that there is no reason why the officers of the Courts of Adawlut should not be vested with the authority of trying parties committed by the district officers; the extent of their jurisdiction might in the first instance be limited to that possessed by the assistant magistrates, but capable of being increased by the grant of special powers by the session judge or Sudder Adawlut, to the authority possessed at present by the magistrates; they would, of course, also become the committing authority to the session judge in all cases of a heinous nature.

3. They should have the necessary authority, of course, of summoning all parties before them whose evidence they may require in the investigation of cases, but the appearance of persons on the district officers' establishments should be applied for through the district officers.

4. In the exercise of their powers as magistrates, it would not be advisable to subject the officers of the Adawlut to the jurisdiction of the zillah magistrate; but the session judge should have the entire supervision of their conduct, to which authority the zillah magistrate should be competent however to bring to notice any part of their conduct, which, from the reports of his district establishment, may be conceived to be irregular.

5. In order, however, that the zillah magistrate should continue to be fully acquainted with the state of the police of his districts, the officers of the Adawlut should be required to make monthly returns of cases handed up to them by the district officers, and the manner in which they were disposed of.

6. Any observations arising out of cases tried by them, that the officers of the Adawlut may have to make of the conduct of the district officers, of the nature described in section 8 and clause 1, section 22, Regulation XII. of A. D. 1827, should be made through the session judge to the zillah magistrate, they should have no authority themselves to reprimand the district authorities. This, I think, is essentially necessary to obviate the confusion which a clashing of authority among natives in a district would occasion, and to prevent the authority of the district officers being brought into contempt.

7. For obvious reasons, cases tried by the district and village police officers, and cases coming, with the exception noticed in the preceding paragraph, under sections 8 and 22 of Regulation XII. of A. D. 1827, and those provided for in sections 11 & 27 of Regulation XVI., and section 16 of Regulation XVII. of the same code, should not be subjected in any way to the cognizance of the officers of Adawlut, but should be treated as at present.

8. The adoption of a measure of this kind would often relieve parties from the inconvenience of long journeys, and the hoozoor cutcherries of a great deal of business, of which there is at present so great a variety, that it is impossible that all can be so fully attended to as it should be, and it is quite impossible to say, that persons vested with such large civil authority as are the officers of the Adawlut, are not competent to the duty.

9. Such is the opinion that I would respectfully offer on the question generally, as applicable to this particular zillah. It is to be observed, that there are here only two

two district moonsiffs, one stationed at Alpar, the other at Bulsar, and, therefore, the plan, if adopted at all, could only under these circumstances be introduced partially, viz. in Alpar and in Bulsar, and the districts in their respective neighbourhood.

10. I wish a report on this question had been made by my predecessor, whose opinion would have been more satisfactory, or that it had not come upon me so immediately after my return to the country; as however an answer to the courts' inquiry appears to be urgently required, I have thought it better to give an opinion at once, than longer to delay it.

I have, &c.
(signed) *W. C. Andrews*,
Magistrate.

Zillah Magistrates' Office, Surat,
11 December 1838.

(No. 170 of 1838.—Judicial Department.)

From *J. Vibart*, Esq., Magistrate, Surat, to *J. W. Woodcock*, Esq., Assistant Register, to the Suddur Foujdaree Adawlut, Bombay; dated 10 Sept. 1838.

Sir,

With reference to the court's circular of the 4th July last, No. 977, I have the honour to forward a report from the joint magistrate of Broach on the subject of conferring criminal jurisdiction on the native officers of the Adawlut.

I have, &c.
(signed) *J. Vibart*, Magistrate.

Zillah Magistrates' Office, Surat,
10 September 1838.

(No. 134 of 1838.—Judicial Department.)

From *R. C. Chambers*, Esq., Acting Joint Magistrate, Broach, to *John Vibart*, Esq., Zillah Magistrate, Surat; dated 7 September 1838.

Sir,

I have the honour to offer the following remarks on the subject of inquiry proposed in the circular from the Sudder Adawlut, dated the 4th July 1838, namely, the advantages to be derived from conferring criminal jurisdiction on the native officers of the Adawlut.

2. If it is proposed to relieve the komavisdars, and to give the sole jurisdiction in matters of police throughout the district to officers of the Adawlut, this would be impossible, without a very great increase of establishment, for no patell, zullattee, village havildar, or even burtunias, could be employed, as at present, on police duties, without danger of the orders from the Adawlut clashing with those from the revenue officers. It would be necessary also to give each Ameen an office establishment for the preparation of cases; and even after all the expense, there would still be this great objection, that when the prosecution of police inquiries called him away into the districts, the business of the civil court would be at a stand, whereas komavisdars' revenue duties may be carried on by an inferior carcoon. This plan, therefore, is impracticable.

3. But it might be proposed to give the Ameens only penal jurisdiction, leaving the active police or thief-catching part of the business to the komavisdars. In my opinion the labour of the komavisdars would not be reduced by the plan, as they would still have to prepare the cases for trial, and the chief labour consists in their preparation, not in their decision. If the komavisdars were allowed to commit persons for trial before the Ameens, without taking the depositions in writing, the evidence of the witnesses before the latter court could not be depended on unless the case was of such a nature that it might be committed and decided within 24 hours after the apprehension of the prisoners, and this could happen only in cases connected with the town in which the police office was situated.

4. With respect to the relief which would be afforded to individuals by lessening the distance they would have to travel to give their evidence, if the penal

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power of the Ameen was equal only to what the komavisdars hold at present, the distance would be increased rather than lessened, because the number of Ameens' stations in the six purgunnahs is only two, namely, Jumboosur and Hancote. Even supposing the power of the Ameen made equal to that of the magistrate, no advantage would be gained by the parties in any case, except by those residing in Hancote, for in Jumboosur and Ahmode, an assistant magistrate is stationed during nine months of the year.

5. Little advantage, therefore, would result either to komavisdars, or to the parties concerned as complainants and witnesses. The labour of the collector's department would, however be considerably reduced, supposing the power of the Ameens was made equivalent to that at present enjoyed by assistant collectors, namely, the power of passing sentences of 12 months' imprisonment, but requiring confirmation when exceeding three months. It cannot be said that such power might not be safely restricted to persons who are found fit to decide civil suits of any amount; but I cannot provide against the difficulties which attend the questions of revision and appeal. If the powers of revision were vested in the judge and his assistants, the collector would be very imperfectly acquainted with the state of the police in his district, and would merely form the medium for the consequence of the komavisdars of the orders from the Adawlut regarding the preparation of cases. If, on the other hand, the revision of the Ameens' decisions was entrusted to the collector, the former functionaries would be under the orders of two separate departments.

6. It will be seen, therefore, that my opinion is generally unfavourable to the proposal of entrusting the Ameens with criminal jurisdiction; but I think in some cases it might be advantageous to do so; namely, in large towns where the police duties were very heavy. In such instances they should have the sole police jurisdiction under the orders of the judge, and with powers not greater, I think, than those now enjoyed by the komavisdars. The extent of business from which this would relieve the komavisdars in this zillah, may be estimated from the following statement of the number of cases occurring in the cusbas, decided by the komavisdars in 1837, or forwarded to the hoozoor:

1. Jumboosur	- - - - -	38 cases.
2. Ahmode	- - - - -	13 „
3. Uklesur	- - - - -	33 „
4. Hansote	- - - - -	23 „

The first and last only of these towns are stations of the Ameens' courts; in the first the transfer of the police of the town, the Ameen would certainly lessen the komavisdar's duties, and allow of his moving more about his district; but I doubt if the police would be so well managed by the Ameen and assistant judge at Broach, as it is at present by the komavisdar and assistant magistrate stationed permanently in the district, and the distance which the complainants and witnesses would have to travel, would in many cases be greater. In the last town, Hansote, the population is so small, and the district so compact, that I see no necessity of relieving the komavisdars from duties which are not greater than those performed by the komavisdars of other districts.

7. Finally, with regard to the city of Broach, I am aware of no objection to giving over the police jurisdiction to the assistant judge, who would be able then to determine whether it would be necessary to give any jurisdiction to the native judges, &c., or whether the duties might not be equally well or better performed by a separate officer holding the appointment of a Foujdar. In my opinion, however, the latter would in general be the best plan, as the native commissioners are more frequently chosen for their respectability than their activity; but when both these qualities are combined, as in the case of Ardashere Bahdoor, at Surat, there can be no objection to entrusting both duties to one officer.

I have, &c.

(signed) *R. C. Chambers,*
Acting Joint Magistrate.

Joint Magistrates' Office, Broach,
7 September 1838.

(True Copy.)
(signed) *J. Vibart,* Magistrate.

(No.

(No. 107 of 1838.—Judicial Department.)

From *J. N. Kirkland*, Esq., Acting Magistrate, Kairah, to *P. W. Le Geyt*, Esq., Register to the Sudder Dewanny and Sudder Foujdaree Adawlut, Bombay; dated 23 July 1838.

Sir,

With reference to your circular letter of the 4th instant, No. 977, requesting me to favour the judges with my sentiments as to the advantages to be derived from conferring criminal jurisdiction on the native officers of the Adawlut.

2. In reply, I do myself the honour to state, that I am not of opinion the conferring criminal jurisdiction on the native officers of the Adawlut would at all relieve the collectors' department from a portion of their duties; first, because unless a separate establishment for preparing the cases was kept up for the Adawlut officer, their preparation would still devolve on the collectors' establishment; the duties, therefore, in the district komavisdars' office would not be lighter than at present; secondly, viewing the state of the civil file of the Adawlut officer at Kairah, which would appear to average monthly 150 cases, and will most probably be larger when the civil suits at present decided by the collectors' department are made over to the Adawlut, by the modification of the rules contained in chap. 8, Regulation XVII. of 1827. I question, therefore, even if the proposed measure had the effect of lightening the duties of the collectors' department, whether the judicial officer would find leisure for criminal duties without hinderance to the regular performance of the duties that devolve on him in his civil capacity, which, if correct, would, in my humble opinion, more than counterbalance any assistance to be derived from his services in a penal way.

3. What is wanted in the Kairah districts are thanadars, who would move about the country, look after the police, and prepare cases on the spot where the offences are committed. A few respectable individuals of this description, placed under the komavisdars, would tend greatly to strengthen the efficiency of the subordinate police force, by ensuring a greater activity and vigilance from them in the performance of their duties, by which the amount of crime would be greatly diminished.

4. Should the Adawlut officers be invested with penal powers, I do not think they should be empowered to punish to an extent beyond a fine of 25 rupees, and ordinary imprisonment with labour, not exceeding two months.

5. It would certainly be a benefit derived, if the necessity could be avoided of bringing parties to the hoozoor, but, at the same time, I question if their complaints would sooner be settled, or as satisfactorily, were they placed on trial at the kusbah. When a case arrives at the hoozoor, there is seldom, without some cogent reason, any delay in bringing the matter to a hearing, when the decision is either final, or the case is without delay forwarded to the sessions.

6. The only check that appears to me necessary to detect errors on their part, and to have them quickly remedied, is to allow an appeal from their decisions to the session judge.

I have, &c.

(signed) *J. N. Kirkland*,
Acting Magistrate.

Kairah, Magistrates' Office,
23 July 1838.

(No. 81 of 1838.—Judicial Department.)

From *J. H. Jackson*, Esq., Acting Magistrate, Ahmedabad, to *J. W. Woodcock*, Esq., Assistant Register to the Sudder Foujdaree Adawlut, Bombay; dated 27 September 1838.

Sir,

I have the honour to acknowledge the receipt of your circular, No. 977, of the 4th July last, and in complying with the request of the judges therein made, I beg leave to state, that I hold but one opinion regarding the expediency of giving the Ameens, moonsiffs and native judges, criminal jurisdiction. As far as my acquaintance with officers of this description goes, I believe them to be generally so wanting in principle, as to induce me to think that it would be very desirable to

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lessen considerably the powers with which they are already invested, instead of increasing those powers; and I do believe that such a step would not only be a most beneficial one, but a very popular one with the poorer classes generally, and with those more honest suitors having just and good claims, though perhaps the contrary might be the case with those whose claims might be of a more questionable nature.

2. I am inclined to think, that if the real feelings of the people could be got at, they would generally be found to be in favour of a system which secured to them a great degree of European agency in civil courts.

3. If it is, however, necessary, with the view of relieving revenue officers from a part of the multifarious duties which they are now called upon to perform, to give criminal jurisdiction to natives to any extent, it would, in my opinion, be infinitely more useful to constitute native magistrates, entirely separate and unconnected with any other functions, persons who could move about the country, and whose employment in this manner in particular might be productive of some real advantage to the country; but to give the additional powers here contemplated, exercising such extensive civil jurisdiction, and who are necessarily stationary, and especially to a class of people who, if they are not more unprincipled, certainly are not more honest and free from corruption than the generality of their brethren, would, I think, not only give rise to much oppression and tyranny, but an engine would thus be placed in their hands which might be effectually used in rendering detection of abuse of power and peculation infinitely more difficult than at present; and the more I consider this subject, the more am I inclined to think that the evil it will occasion will, beyond all calculation, outweigh any advantages which can possibly be expected from the adoption of the measure proposed, of adding criminal jurisdiction to the civil powers now exercised by the moonsiffs.

4. If it is determined to give exclusive criminal jurisdiction to natives, I am of opinion that the criminal powers to be exercised should not exceed three months' imprisonment, and an appeal in every case should be open to the magistrate, who should have authority to call for proceedings, revise, modify or annul decisions. The assistants on deputation should have similar authority with the magistrate, excepting the power of annulling a sentence; if, however, there should appear good ground for annulment, the assistants might be authorized to hand the proceedings in such case to the magistrate for his decision.

I have, &c.
(signed) *J. H. Jackson*,
Acting Magistrate.

Ahmedabad, Magistrates' Office,
27 September 1838.

(No. 47 of 1839.)

From *R. H. Pringle*, Esq., Acting Collector and Magistrate, to the Register of the Sudder Foujdaree Adawlut, Bombay; dated 7 January 1839.

Sir,

I HAVE the honour to acknowledge the receipt of your circular of the 4th July last, calling for my opinion on the advantages of conferring criminal jurisdiction on native officers presiding in the Courts of Adawlut.

2. The jurisdiction it would be proposed to confer, would, I presume, be the intermediate penal powers between those of the mamlutdars and session courts, and which are now exercised by the magistrate and his assistants; that is, that the district moonsiffs should try cases committed for them by the mamlutdars to the same extent as is now done by the magistrates, and in the same way as the session court tries cases committed by the latter authority. It would also, I presume, be intended to transfer the jurisdiction in all such cases, as there would be obviously much practical inconvenience in only a partial transfer.

3. Such an arrangement would undoubtedly be a relief to the collectors and their assistants, whose duties are more than they can well accomplish. It would also be advantageous to parties and witnesses, from bringing justice near to their doors. But I think there are some practical objections to bringing the revenue and judicial establishments into immediate contact in their inferior grades. The distribution

distribution of authority which unites in the same person independent powers in one department with subordination in another, is an idea less familiar to natives than Europeans, and in its practical operation among the former might, I apprehend, give rise to jealousies and disputes injurious to the public service; and this is the rather to be avoided, as our native revenue functionaries are already perhaps in a less favourable position, with reference to those in the judicial branch of the service, than is desirable.

4. Whether the proposed extension of criminal powers might be safely trusted to the native judicial officers, and how far its exercise might be compatible with their other duties, are questions which can be best answered by the Judicial Department.

5. On the whole, however, I am doubtful whether, so long as any portion of the criminal administration remains with the collectors, its partial transfer, as now proposed, would not be productive of more inconvenience than benefit.

6. I herewith transmit the opinions of my deputed assistants on this subject.

I have, &c.
(signed) *R. H. Pringle*,
Acting Collector and Magistrate.

Tannah, Collector and Magistrates' Office,
7 January 1839.

From *D. Davidson*, Esq., Acting Third Assistant Magistrate, Tannah, to *George Coles*, Esq., Acting First Assistant Collector in Charge, Tannah; dated 25 July 1838.

Sir,

On the subject of the circular letter to your address from the Sudder Foujdaree Adawlut, No 977 of 1838, dated 4th July, I have the honour to state my humble opinion.

2. Retaining for all revenue officers the magisterial powers with which they are at present vested, without which it would be impossible to pursue revenue investigations with effect, I would beg humbly to propose:

That moonsiffs, within the ranges of their respective courts, be vested with the same magisterial powers as comavisdars, and in ordinary conduct the duties of chief district police officers, comavisdars, mahalcurries, &c. (who are generally so over-worked with their revenue duties), only acting for the moonsiffs extraordinarily, when necessary in any particular case, where they can do so with effect, as in cases when they are on the spot, and the moonsiff at a distance, and always acting in cases in which the collector and his assistants as magistrates have penal jurisdiction, with which the moonsiff ought not to have any thing to do. That the collector and his assistants, as magistrates, have the same control over moonsiffs as chief district police officers which they now exercise over comavisdars, and that they themselves be controlled by the zillah judge in the same way that the magistrate now controls his assistants; that with the proviso made at the commencement, the zillah judge becomes the magistrate, assisted by his native judge at the hoozoor, with the powers of an assistant magistrate, besides his European assistant.

If, in addition to the above, assistant magistrates were appointed under Act XIX. of 1835, as I had the honour to suggest in my Foujdaree report of the 24th April last, to your address, not only would the object of relieving the Revenue Department be very greatly attained, but I am convinced that much more effectual justice would be administered to the people.

Nor would the cost of such a plan be great; three such assistant magistrates under the judge of each zillah would suffice; and supposing that they were subalterns, and received 200 rupees a month, besides their military pay and allowances, they would only cost about 70,000 rupees a-year for the whole Presidency, and the establishments they would require, certainly would not make up a lac of rupees.

This plan may appear confused, but it is only humbly suggested, in the hope that a better and simpler may be devised. Perhaps, as an immediate measure

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of relief to the collector's department, the preparation of all magisterial cases might be transferred by the comavisdars to the moonsiffs.

I have, &c.

Tannah, Magistrates' Office, 25 July 1838.

(signed) *D. Davidson*,
Acting Third Assistant Magistrate.

OPINION and Report of the Acting First Assistant Magistrate, on the Circular from the Sudder Dewannee and Sudder Foujdaree Adawlut (No. 977) of 1838, dated 4 July 1833, "relative to conferring Criminal Jurisdiction on the Native Officers presiding in the Courts of Adawlut."

I RESPECTFULLY beg to state, that I can perceive no advantage which would accrue to the public by adopting the proposed measure of conferring criminal jurisdiction on the native officers of the civil court; first, because the collectors' department has already been greatly relieved by the transfer of revenue suits to the Adawlut, and because I have never found the magisterial business to interfere with other duties. Secondly, I am of opinion that it would be highly inexpedient to confer upon the class of officers who now preside in the district civil courts, greater criminal powers than are allowed to their brethren in the police department, while the small number of cases which the latter are competent to decide, do not call for additional aid in disposing of them. Educated as are the individuals of both these classes at present, I, for one, should be very sorry to see the administration of criminal laws (beyond the trifling extent already entrusted to mamlutdars and mahalcurries) placed in the hands of natives.

I have, &c.

(signed) *J. M. Davis*,
Acting First Assistant Magistrate.

Tannah, 12 October 1838.

(No. 634 of 1838.—Judicial Department.)

From *A. Elphinstone*, Esq., Acting Magistrate, to *P. W. Le Geyt*, Esq., Register to the Sudder Foujdaree Adawlut, Bombay; dated 31 July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your circular, No. 977, dated 4th instant, and to state, in reply, that the transfer of criminal jurisdiction to the native judicial functionaries would afford desirable relief to the native police officers, and, therefore, be attended with advantage; if the magisterial authorities were empowered to apprehend and commit, but not required to prepare the cases they might transmit, further than to satisfy themselves that reasonable grounds of suspicion existed for the committal of those persons whom they might transfer to the native judicial functionaries for trial before their tribunals.

2. If the native magisterial authorities were held amenable for the full preparation of the cases, as at present, the proposed measure would not give them any relief.

3. District judicatures would certainly tend to remove the objection of witnesses to avow their knowledge of facts, the concealment of which they may consider would save them a journey to the hoozoor.

4. The extent of penal powers that I would recommend to be entrusted to the three gradations of the native judicial functionaries is as follows:—

To the Principal Sudder Ameens:
Flogging for theft only, to the extent of thirty stripes.
Solitary imprisonment, not exceeding one month.
Imprisonment, with or without hard labour, not exceeding one year.
Fine, to the amount the law or offence may require.

To the Sudder Ameen:
Flogging, for theft only, to the amount of thirty stripes.
Imprisonment, with or without hard labour, not exceeding nine months.
Fine, to the amount the law or offence may require.

To

To the Moonsiffs:

Flogging, for theft only, to the extent of thirty stripes.
Imprisonment, with or without hard labour, not exceeding six months.
Fine, to the amount the law or offence may require.

With regard to corporal punishment, I am of opinion that part of a sentence should remain unexecuted until it received the confirmation of the session judge or his detached assistant.

5. As a check on the proceedings of the native judicial authorities, the session judge and his detached assistant ought to be invested with the power of calling for any case appealed to them, otherwise attracting their notice; monthly returns of all cases decided should also be transmitted to the session judge or his detached assistant, as the police district authorities have been in the habit of sending to the magistrates, wherein the exact shade of each offence ought to be correctly stated, that the punishment apportioned may be judged. The receivers of stolen goods, under the plea of not knowing that the goods received were stolen, will be the class of persons who, from their character and superior condition in life, are most likely to escape conviction, by corrupting their native judges. Lastly, as a check, all sentences of the native judicial functionaries should be open to revision and reversal by the session judge and his assistant, with the power also, on strong grounds, of sentencing to punishment persons improperly acquitted, or enhancing the punishment of those insufficiently punished.

I have, &c.

Rutnagheree, Magistrates' Office,
31 July 1838.

(signed) *A. Elphinstone*,
Acting Magistrate.

(No. 2363 of 1838.)

From *R. Mills*, Esq., Principal Collector, Poonah, to the Register to the Sudder Foujdaree Adawlut, Bombay; dated 15 August.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 977, dated 14th instant, requesting my sentiments on the advantages to be derived from conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut.

2. That the collectors and magistrates and the native police and revenue officers have more duties to do than they can satisfactorily accomplish, every practical man of business will admit. The police and revenue duties, as far as the magistrate is concerned, would in no degree be diminished by the appointment of additional police officers, or officers having police jurisdiction; on the contrary, the duties of that officer would be greatly augmented, as the magistrates would be obliged to correct the errors of those functionaries, and to hear appeals from them; for, throughout my experience, I have seen but few cases by mamlutdars well got up, and but few decisions by them with which the parties were satisfied, and would not appeal against if an opportunity offered, and moonsiffs are not of so superior order of men that a more satisfactory result might be contemplated.

3. Even supposing, however, the class of native officers in the Courts of Adawlut to be more intelligent than the native servants in the Revenue Department, giving them penal jurisdiction would not relieve the magistrate of any portion of his duties, and it is that officer principally whose duties should be lessened. The appointment might, perhaps, in some respects relieve the mamlutdars of some portion of their arduous duties, but it would probably produce inconvenience in other respects of far more importance than any advantage gained by the measure.

4. By giving police jurisdiction to the moonsiffs, they would be subject to two authorities, an arrangement, to say the least, very objectionable and inconvenient.

5. On a mature consideration of the subject, I am of opinion that no practical advantages would be gained by conferring criminal jurisdiction on the native officers of the Adawlut; it would in no degree lessen the duties of the magistrate and his assistants, but rather augment them; it would produce a constant clashing of authority between the Judicial and Revenue Departments, always prejudicial to the respectability of the British character, and detrimental to the morals of the people.

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6. I beg leave to hand up an original letter, No. 206, of 30th ultimo, from the joint magistrate of Sholapoor, offering his sentiments on the question.

7. To increase the powers of the mamlutdars, as proposed in the third paragraph of Mr. Stewart's letter, would be worthy of consideration, if those officers were not so harrassed and worried in their revenue capacity; but so long as mamlutdars have the numerous important and arduous duties they have at present to perform, I am of opinion their criminal powers should not be increased, particularly as the convenience to parties, which is one of the advantages which Mr. Stewart proposes to gain by the adoption of his suggestion, should be greatly increased by the appointment of assistants to separate districts.

8. The increasing wealth and activity amongst the people, owing to their better acquaintance with our laws, and the measures which have been adopted to ameliorate their condition, must and will greatly tend to augment crime, and render it absolutely necessary that increased means of affording redress should be adopted; and it is my opinion that the revenue and judicial branches should be separated, and district European and native police officers appointed for each zillah, wholly independent of the revenue officers.

9. The nomination of European assistants to separate districts has not tended in any way to prevent crimes and offences. As the country advances in commercial importance, which it is rapidly doing, and as the people cease to regard us or our measures as infallible and indicative of superior minds, to have less faith in our promise, and to see the glorious uncertainties of the law, we must expect that every species of crime will greatly increase, and it behoves the Legislature to adopt early and effectual measures to meet the demand for justice which will be daily increasing.

10. When the revenue civil suits are added to the duties of the moonsiffs, which they will shortly be, some at least of that class of Government servants will, if they do their duties properly, have quite sufficient to occupy their time; and to saddle them with criminal jurisdiction, in addition, is to render them ineffective, without in the slightest degree diminishing the duties of the department it is confessedly the object of the measure to effect.

I have, &c.
(signed) *R. Mills*,
Principal Collector.

Principal Collector's Office, Poonah,
15 August 1838.

(No. 206 of 1838.)

From *P. Stewart*, Esq., Acting Joint Magistrate, to *R. D. Mills*, Esq., Principal Collector and Magistrate, Poonah; dated Sholapoor, 30 July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your letter (No. 2037 of 1838), dated 16 July 1838, forwarding circular (No. 977 of 1838), dated 4th instant, from the judges of the Sudder Foujdaree Adawlut, requesting my opinion as to the advantages to be derived from conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut, with a view to relieve the collectors' department of a portion of its duty, and to benefit the parties by avoiding the necessity of a journey to the hoozoor, &c.

2. In reply, I beg to state, that I conclude the same reasons that have induced a separation between the judicial and revenue duties amongst European officers, are applicable to our native servants, and that it would not be advisable to confer criminal jurisdiction on the officers presiding in the Courts of Adawlut throughout the zillah, but it might with advantage be conferred upon them, within the limits of the principal town in each pergunnah, which would in fact be equivalent to appointing a Foujdar, who should also be native commissioner or moonsiff. I should be disposed to recommend the extent of the penal power to be the same as exercised at present by Foujdars; the effect of this would be to relieve mamlutdars of a considerable portion of their duty, and the possibility of the authorities clashing would be prevented.

3. With a view to prevent the necessity of a journey to the hoozoor by the parties, witnesses, &c., and their detention for a considerable period, which is frequently

frequently the case when the collector or his assistants have a press of business, I would beg to propose, that the penal powers of the mamlutdars be extended to the same as that now held by assistant magistrates, their decisions in all cases being referred for sanction to the assistant magistrate in charge of the first pergunnah, when the sentence exceeded their present power; this, at first sight, might appear to throw great additional work on the mamlutdars, but when it is considered that almost every criminal case is prepared for them, I think it will be evident that recording the sentence would add little to the labour, and one additional carcoon would be sufficient for the purpose of keeping the minutes, copying them, &c. This arrangement would prevent much expense and inconvenience to all parties, and would, in my opinion, lead greatly to the furtherance of the ends of justice, as many persons are deterred from prosecuting for fear of the delay and consequent loss of time.

I have, &c.

Joint Magistrates' Office, Sholapoor, 30 July 1838.

(signed) *P. Stewart*,
Acting Joint Magistrate.

(No. 984 of 1838.)

From *H. A. Harrison*, Esq., Magistrate, to *P. W. Le Geyt*, Esq., Register to the Sudder Foujdaree Adawlut, Bombay; dated 25 July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your circular, No. 977, dated the 4th instant, calling upon me for my sentiments as to the advantages to be derived from conferring criminal jurisdiction on the native officers in the Courts of Adawlut; how far such a measure appears required, with a view of relieving the collectors' department from a portion of their duties; the extent of penal powers it might be advisable to entrust to these officers, &c. Judicial Dep.

2. In reply, I beg leave to state, that if it is to be understood that it is proposed to transfer the adjudication of all criminal cases from the native officers under the magistrate to the native judges, it appears to me that any advantage that would attend such a transfer (besides the relief it would undoubtedly afford to the collectors' department), would depend upon whether it was in contemplation to increase very greatly the number of judicial officers.

3. If such an increase is not contemplated, but simply that the present number of Ameens and moonsiffs should try the cases disposed of by the collector's native department, then it would seem evident that no advantage could be expected to result to the community at large from the transfer, inasmuch as we should have but 12 officers administering justice in the collectorate, where we have at present 30.

4. But possibly it may not be intended to interfere with the powers at present exercised by the native officers on the collectors' establishment, who adjudicated only in trifling cases, but to confer part, or a whole of the powers delegated to the European officers on the native judges.

5. Supposing this, then, to be the measure in contemplation, it does not appear to be open to the same objection, on the grounds of inconvenience to the people, as that of relieving the amuldars and mhalkurries from the duties now performed by them; but in order that the criminal business of the country should be carried on with as little inconvenience to its inhabitants as at present, it would be necessary that the same extent of penal powers as those now exercised by the collectors' European establishment should be conferred upon them.

6. There can, I apprehend, be no doubt as to the necessity which exists for relieving the collectors in the Deccan from some part of their overwhelming duties; and though doubts will be entertained by many as to the expediency of conferring such extensive powers on the native judges, I am not aware of any argument against the measure which would not apply with equal force to their being entrusted with the responsible duties they at present perform under the existing Regulations, as judges in civil matters.

7. With respect to the mode in which cases should be committed for trial before the native judges, all committals should, in my opinion, be made by the amuldars and mahalkurries, as is at present done by these officers when they

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they commit for trial before the assistant magistrates; all committals for trial before the judges now made by the assistants being made by the native judges on their receiving the cases from the amuldars.

8. From what I have stated, I would not wish it to be understood that I, myself, consider that it would be any improvement on the present system, the entrusting the penal powers now exercised by the collector's European officers to the native officers of the judges. The part of the collector's department it is most necessary to relieve (besides the collector himself), is his native officers, and this would not be effected by the measure in question, whilst the relief to the collector would not be commensurate with the evils which might be expected to follow the change of system.

9. Not the least would be, that justice would not be administered with the same degree of purity as at present, and that a number of appeals would probably be made against the sentences passed by the native judges, not known under the present system, which might seriously interfere with the efficient discharge of the judicial business of the country.

I have, &c.

Ahmednuggur, Magistrates' Office, 25 July 1838.

(signed) *H. A. Harrison*, Magistrate.

From *D. Blane*, Esq., Acting Magistrate, to the Register Sudder Adawlut, Bombay; dated Dhoolia, 16 July 1838.

Sir,

In reply to your circular of the 4th instant, I have the honour to offer, as my opinion, that in the event of criminal authority being conferred upon the district moonsiffs, it should be of the nature of the jurisdiction now exercised by assistant magistrates, and to the same extent, the sentences submitted by his assistants for the confirmation of the magistrates being by the moonsiffs submitted to the assistant judge.

2. The duties of the komavisdars would thus remain the same, and I know not how to suggest any means of lightening them; but the collector and his European assistants would in some measure be relieved from the weight of magisterial business.

3. I am not, however, of opinion that much advantage would be derived from such an arrangement. In this province, where magisterial authority has been conferred on the officers of the Bheel corps, and on the Bheel agent at Kunnur, and the collector's assistants are posted in permanent charge of districts, the magisterial business is subdivided in a manner to be disposed of without difficulty, and the intermixture of the judicial with the revenue and magisterial establishments would only, I fear, lead to jealousy and confusion.

4. As the apprehension and preliminary examination of offenders must remain with the collectors' and magistrates' establishments, the relief in point of business would be immaterial, and if the object be to increase the powers of the native local authorities, to save the detention of witnesses, &c., the komavisdars might be entrusted with the increased powers, as well as the moonsiffs. It is true, at present, the former are seldom so well paid as the latter, but it is to be questioned whether that is not an error on the estimation of their relative responsibility and public importance, and a source of jealousy which it would be highly desirable to obviate.

5. The regulation in progress for transferring all suits for the inheritance and possession of wuttuns, &c., to the Adawlut, is a much more legitimate measure for lightening the entries of the collector's department, and will render any innovation of the above nature still less necessary than at present.

I have, &c.

Candeish, Magistrates' Office, Dhoolia, 16 July 1838.

(signed) *D. Blane*, Acting Magistrate.

(No. 1424 of 1838.)

From *H. A. Harrison*, Esq., Magistrate, to *Charles Sims*, Esq., Acting Register to the Sudder Foujdaree Adawlut, Bombay; dated Seeroor, 4 December 1838.

Judicial De

Sir,

I HAVE the honour to transmit an original letter from the joint magistrate of Nassick, dated the 25th ultimo, in reply to your circular, No. 977 of 1838.

2. My own reply to the circular was forwarded on the 25th July last.

I have, &c.

Circuit Cutcherry at Seroor, 4 December 1838. (signed) *H. A. Harrison*, Magistrate.

(No. 233 of 1838.)

From *R. K. Arbuthnot*, Esq., Joint Magistrate, to *H. A. Harrison*, Esq., Magistrate, Ahmednuggur; dated Egutpoorie, 25 November 1838.

Sir,

I HAVE the honour to acknowledge the receipt of the letter from the register to the Sudder Foujdaree Adawlut, to your address, dated 4th July, and transmitted to me from Ahmednuggur on the 9th of the same month, requiring my opinion as to the advantages of conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut, and whether such a measure be required to relieve the collectors' department from a portion of their duties. I am also required to give my opinion on other points which I shall mention hereafter.

Presuming that the judicial native officers are as competent as mamlutdars of districts to investigate offences, there can be no reason why they should not be permitted to exercise criminal jurisdiction to the same extent at least, and if by conferring these powers on them it is intended to relieve the mamlutdars altogether from attending to the police business of a district, the advantage of the measure will then mainly depend on the time and degree of attention the judicial officers may be able to give this part of their duty, as well as the extent of establishment they may be allowed to assist them in performing it, on which points I can of course offer no opinion.

If they can afford to devote greater time to their police functions than the mamlutdars, and have an establishment solely for this purpose, which the others have not, the business undoubtedly will be, at least it should be, better and more quickly got out of hand, and much benefit might be expected from the arrangement. But if it be intended, as I have heard stated, although I do not gather this from the letter under reply, that the police business of the districts, such as taking immediate cognizance of offences, the apprehension of offenders, and searching out for proof against them, should still remain with the mamlutdars, and simply that cases prepared by them be given over to the judicial officers for trial, I must express my opinion most strongly against it, as no benefit, I consider, would then result from the proposed plan.

In the event of the police business being made over to the judicial officers in the manner I have contemplated, an additional expense will of course be required on account of an establishment for them, as that which the mamlutdars have, is even now too limited for the efficient discharge of their fiscal duties, and could not admit of being curtailed on this account.

As regards necessity of relieving the collector's department from a portion of its present duty, it should be borne in mind that the late Regulation, by which the trial of land suits has been transferred to the Adawlut, has already relieved it from a considerable share of business, and although, no doubt it is highly desirable the mamlutdars should be freed from the necessity of attending to magisterial cases so closely as is now required of them, yet I am not altogether prepared to say that the business is above what the department can perform. A joint police officer, appointed under each mamlutdar on a salary of 50 rupees each per mensem, by whom all criminal cases could be tried, and who would generally relieve him from the other magisterial duties of his office, would be in

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my opinion all that is necessary to render the department as efficient in this respect as can be expected in the present circumstances of the country.

The mamlutdars would then have abundant leisure to attend to revenue matters, without their attention being called constantly off from these to the preparation of criminal cases and returns, and the collectors would still have the benefit of their experience and local knowledge in recommending the adoption of measures for the better management of their districts, than would be the case if the police duties were altogether taken out of their hands.

The remaining points on which I am required to give my opinion are, the extent of penal powers with which judicial officers should be entrusted; the benefit to parties from criminal cases being decided near the spot where crimes are committed; how the cases should be prepared for trial before the native judges; and what checks be imposed, so as to correct and remedy any errors they might commit.

From a consideration of this question, I am induced to understand it is also in contemplation to entrust native judges with an extended criminal jurisdiction, such as is at present vested in the European magistracy.

If so, I have no hesitation in offering a decided opinion against the arrangement. In the first place, because I have no reliance on their judgment in apportioning punishment to crimes, or in deciding on the extent to which a prisoner is guilty, with reference to the particular circumstances of each case; and secondly, because the European superintendence in the Adawlut is by far too limited to admit of efficient redress in cases of injustice; the evil of which, as regards civil business, has often attracted my attention, and much more, I have no doubt, would it be felt, were an extended criminal jurisdiction placed in their hands without the power of appeal.

If it be thought advisable to entrust natives with powers of punishing crime to a greater extent than is now the case, I am decidedly of opinion it would be better to enlarge the jurisdiction of the mamlutdars or joint police officers, were they appointed as I have proposed, who are in most cases responsible to European assistant magistrates, within a short distance of their cutcherries, than to give them to any native, however respectable, from whose decision a party, as would be the case at Nassick, would have to walk 100 miles to obtain redress.

Nor, since so many assistant magistrates are now every where scattered throughout the districts, would any great benefit be derived to parties by being brought up before native judges (who are not greatly more numerous), while I feel quite assured, that in comparision with Europeans, the public would place no confidence in the uprightness of their decisions, however fair and just they might be.

Even now our criminal courts are often made a channel for annoying and causing injury to persons against whom an opponent has a spite, and in the hands of the native judges, I fear this evil would not be diminished.

The diminution of business to the collectors' department by the arrangements now contemplated, I again repeat, will be exceedingly trifling, unless the whole of the police duties should also be taken out of his cognizance. In preference to it, I urgently recommend that a joint police officer be appointed under each mamlutdar, to assist in conducting the duty as it is now carried on.

To withdraw the power of punishment altogether out of the hands of the police authorities, supposing this duty to remain with the collector and his subordinates, as now, and that native judges should take only the business of sitting magistrates, would also, I think, be injudicious, and tend to render them less efficient than at present.

I have, &c.

Circuit Cutcherry, Egutpooree,
25 November 1838.

(signed) *R. K. Arbuthnot*,
Joint Magistrate.

(No.

(No. 196 of 1838.—Judicial Department, Criminal.)

From *E. B. Mill*, Esq., Collector and Magistrate, to *P. W. Le Geyt*, Esq., Register to the Court of Sudder Foujdarry Adawlut; dated Dharwar, 18 Sept. 1838.

Sir,

In reply to your letter dated 4th July, on the subject of conferring criminal jurisdiction on the native officers presiding in Courts of Adawlut, I have the honour to offer it as my opinion, that it would be desirable to relieve the collectors' department of a portion of their duties; but I am hardly prepared to recommend, as a suitable remedy, that proposed in the court's letter. If it is intended merely to alter the plan of commitment, and which I conclude it is, I do not see what advantages will result thereby to the collectors' department. If, again, the criminal jurisdiction of the district officers is to be withdrawn from them and placed in the hands of native judges, although relief would thereby be afforded, yet it is doubtful whether the ends of justice would be so efficiently promoted; for, under existing circumstances, a district officer is enabled to use his revenue, as well as police establishment, for magisterial purposes; and again, if the police establishment were withdrawn from the district officer, it would be more or less detrimental to the revenue management, and impair its efficiency.

Under these circumstances, I am averse to the measure, from an impression that the relief would be inadequate, and could not be carried into execution except at considerable expense.

If assistant magistrates had augmented powers, and district amildars were vested with authority to commit to the session judge heinous cases, great relief would be afforded the collectors' department, and equally to witnesses and others.

I have, &c.

Darwar Collector and Magistrates' Office, 18 September 1838.

(signed) *E. B. Mills*, Collector and Magistrate.

(No. 183 of 1839.—Judicial Department.)

From *W. Simson*, Esq., Acting Magistrate, to the Register to the Sudder Foujdarry Adawlut, Bombay; dated Belgaum, 14 September 1838.

Sir,

In reply to your circular, No. 977 of 1838, I beg to hand up for the perusal of the judges, reports from four of my assistants, offering their sentiments on the policy and probable effects of conferring criminal jurisdiction on the native judicial officers. These papers evince a zealous interest on the subject, and their matter generally is so condensed, that an analysis would be but a repetition, and spoil the effect of each. They contain valuable and practical observations, of which I shall freely avail myself, in stating what an attentive consideration of the question suggested to me for securing the important objects enumerated in you circular.

2. My own experience satisfies me that, in most instances, the efficiency of mamlutdars in their revenue business, is much imparied by the attention and time necessarily devoted to their police duties. But the remedy I would propose for this would be, to reduce the extent of their districts where found to be inconveniently large, and by giving peshcars the power to try cases, relieve the mamlutdars from many troublesome details.

3. I would give to peshcars the penal powers now exercised by the mamlutdar, and on the latter officer I would confer powers nearly approaching those of an assistant magistrate, say penal jurisdiction to the extent of two months' imprisonment, with the right of supervising and confirming the proceedings of the peshcar.

4. The disjunction of the police from the revenue functions of the mamlutdar has already been proved to lead to great confusion. Mr. Townsend's obervations on this head are most forcible, and Mr. Bettington describes in strong terms its effects in the Madras territory. Loss of revenue, endless collision of authorities, and an increase in nothing but troublesome disputes, would certainly result from such a measure, or from conferring equal powers on the native judges in the districts,

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districts, which would be virtually the same thing. The coincidence of sentiment manifested by Messrs. Townsend, Campbell and Bettington is remarkable, and I beg to state that I go quite as far as any of these gentlemen, in deeming it a matter of the very highest importance, that natives employed in the revenue branch of our administration should be raised to an equality in importance and public consideration with those in the judicial line, and I believe, with Mr. Bettington, that to form a good mamlutdar, requires a combination of more numerous and higher faculties than go to constitute an efficient native judge.

5. The superior attractions of judicial employment in the mind of our native servants are notorious; and even the judges will, I think, allow that it is desirable rather to reverse than to encourage this relative preference. Whatever may be the reputation, however conspicuous the merit and efficiency of our highest revenue functionaries, they all covet judicial offices. Formerly revenue was the first consideration of Government; and the natives of this part of India do not yet comprehend how so important a branch of state management has come to be postponed to law.

6. Something should be done to elevate the condition of our mamlutdars, and induce them to adhere to their own department, instead of yearning, as they now do, after the more highly considered places of moonsiff and native judge. This object would be promoted by conferring on mamlutdars a higher degree of authority by raising their salaries, and by discontinuing the periodical inspection of their treasuries by the moonsiffs, a practice willingly submitted to by ourselves, but which is undoubtedly regarded by the mamlutdars as exhibiting them in an inferior rank to the native judges.

7. It would be far better to increase the number of talooks, and of mamlutdars, than to allow moonsiffs to interfere with police details. The damage to the revenue is, I consider, an almost insuperable argument on this part of the question. It is in contemplation to recommend the appointment of mhalkurries in many districts of this zillah, an arrangement which would relieve the mamlutdars to the full extent required.

8. Much annoyance would be saved to suitors and witnesses, if mamlutdars were endowed with larger penal jurisdiction; but it might be necessary that their sentences, when exceeding one month's imprisonment, should be subject to confirmation of the magistrate, or the assistant in charge of the district. After full consideration, I am of opinion that mamlutdars should not be entrusted with the preparation of cases for trial before the session judge. Their discrimination of evidence is seldom very correct, and the permission would subject them to the interference of the judge and his assistant.

9. Excepting Mr. Law's suggestions (the principal of which, though conformable to the proposition of your circular, is opposed to all the other opinions here submitted), I agree in nearly every thing that the assistants represent. We have all laboured in the same field, and our general conclusions may be summed up as follow:—

1st. It is expedient to retain police and revenue duties in the hands of the mamlutdar.

2d. There is already too marked a preference among our native servants for judicial over revenue employ.

3d. The proposed extension of police or magisterial powers to Ameens and moonsiffs would increase greatly this mischievious preference.

4th. Mamlutdars and peshcars should have extended powers; and districts now too large to be effectively managed by one mamlutdar, should be reduced, or mhalkurries appointed, subordinate to the mamlutdar.

5th. The introduction of a divided authority would certainly create difficulties in collecting the revenue, and lead to confusion and embarrassment in the management of the country generally.

10. The amount of additional powers which it would be advisable to confer on mamlutdars and their peshcars, is a question of degree; and this, together with the expediency of assigning increased rates of pay to mamlutdars, according to seniority, and on the scale suggested by Mr. Bettington, are points submitted for the deliberation of the judges. For myself, I am of opinion that too much cannot be done for mamlutdars, whose anxious and laborious functions require better remuneration, and who have become universally dissatisfied with the superior advantages enjoyed by their brethren of the Adawlut. Few men of family

family or good connexion now solicit mamlutdarships; while to be made monsiff is an object of the highest ambition to all ranks.

I have, &c.
(signed) *W. Simson,*
Acting Magistrate.

From *J. S. Law*, Esq., Second Assistant Magistrate, to *W. Simson*, Esq., Acting Magistrate, Belgaum; dated Belgaum, 29 August 1838.

Sir,

I HAVE the honour to submit the following observations in reply to your letter of the 22d instant, with enclosure, calling for my opinion on the subject of conferring criminal jurisdiction on the native officers presiding in the Court of Adawlut.

2. I have long been of opinion, that in order to render our mamlutdars efficient revenue officers, it would be advisable to relieve them of a portion of their police duties. At present it is with difficulty that they can get through their current duties without falling into arrears, and can therefore have but little leisure for acquiring such a degree of practical knowledge of the districts under their control, as would fit them for rendering competent aid in revising the assessment, if necessary, or as would enable them in general to devise plans for the improvement of the revenue and the development of latent resources.

3. If the native officers presiding in Courts of Adawlut can spare sufficient time from their civil duties, the plan now under consideration appears to me to be the best that could be adopted. The Principal Sudder Ameens might be entrusted with the same powers as an assistant magistrate; sentences passed by them to more than one month's imprisonment, with hard labour, not being carried into effect without the confirmation of the judge or assistant judge. The Sudder Ameens might be authorized to adjudge sentences of fine and ordinary imprisonment to the extent of two months, liable to confirmation by the magistrate, if beyond 15 days' imprisonment. The moonsiffs might be vested with the same authority as the mamlutdars. The Governor in Council might at the same time be empowered to confer on any officer belonging to the two latter classes the same extent of criminal jurisdiction as proposed for the Principal Sudder Ameens. I would propose that the criminal jurisdiction of all these officers should be confined to the talook in which they reside, and when there is a moonsiff or Sudder Ameen in the same district, he might prepare and commit cases for trial before the Principal Sudder Ameen. Perhaps, however, the most simple plan would be, that the reports and depositions in all cases should be sent in the first instance to the magistrates or session judge (but not the parties or witnesses), and that they should refer such as they might think proper for trial by the native judicial officers, in the same manner as a sessions judge refers cases for trial by his assistant.

4. By this plan, parties residing in districts where no assistant magistrates are stationed on deputation, would no doubt derive great benefit by avoiding the necessity of travelling to the head station; and this would also be the case in other districts when the assistant magistrates might be absent; I have no doubt that at present the dread of a long journey operates to cause the concealment of many crimes.

5. Whatever plan might be adopted, I think that the police authority of the mamlutdars should remain unimpaired; but of course their duties would be chiefly confined to the apprehension of criminals and summoning of witnesses, whilst all the depositions would be taken before the judicial officers. They might, however, continue to increase their present summary jurisdiction when moving about in their districts.

I have, &c.

Belgaum, 29 August 1838. (signed) *J. S. Law,*
Second Assistant Magistrate.

(True copy.)
(signed) *W. Simson,*
Acting Magistrate.

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From *A. Cambell*, Esq., Third Assistant Collector and Magistrate, to *W. Simson*, Esq., Acting Magistrate, Belgaum; dated Belgaon, 3d September 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, dated the 22d ultimo (No. 150), forwarding copy of a letter (No. 977), dated 4th July last, from the Sudder Adawlut, on the subject of conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut, with a view of relieving the collectors' department, and requesting me to give my opinion on the subject.

2. I beg to state the objections which present themselves to my mind against transferring any police duties from our mamlutdars to officers presiding in the Courts of Adawlut.

3. The mamlutdar is an officer whose conduct affects almost the whole of the native community, and especially the cultivators; on his intelligence and honesty the Government depend, to a certain extent, for the amount of revenue they receive, and the subject, for the prosperity of his family; while at the same time the mamlutdar's situation is one of great responsibility, and one in which it is hardly possible for the most upright man to avoid incurring the enmity of those whose malpractices he exposes, whose rent he may consider it his duty to raise, or whose outstanding balances he may realize, and probably in many other ways unknown to any except those who are intimately acquainted with the detail of his duties. It seems, therefore, to be of great consequence that the mamlutdar's importance as a public officer should be kept up as much as possible, and I think that, were the police duties taken from him, his importance in the eyes of the natives would be very much diminished.

4. His establishment would be reduced, his authority over the village officers and their subordinates would in some degree be taken away, and very frequently there would be an unavoidable clashing between him and the officers of the court. The patells also, and those under them, would find two masters set over them, and consequently their duties much more irksome and difficult to perform.

5. The mamlutdar and his establishment seem to possess many facilities to aid in the police; at the annual lavnee and jummabundy settlements, and also in the realization of revenue, they are brought into close contact with almost all the people, and become more or less acquainted with their habits, circumstances and means of livelihood; the nature of the country also, and the resorts of bad characters and wandering tribes become known to them.

6. There can be no doubt that the various duties of the mamlutdar are too much for one officer; but I think an arrangement, similar to that mentioned in Mr. Dunlop's letter of the 7th November last (No. 280), recommending peshkars being entrusted with police duties on increased allowances, is better adapted for the country than that now under consideration.

7. The peshkars might have authority to pass sentences in petty cases; and cases beyond their authority, but within that of the mamlutdar, might be prepared and decided by them, and forwarded for the mamlutdar's confirmation, in the same manner that certain sentences beyond the assistant magistrate's jurisdiction are confirmed by the magistrate; and cases requiring to be forwarded for the magistrate's decision, might be forwarded by them direct, and included in a periodical return to the mamlutdar, as cases are forwarded by the assistant magistrate to the session judge direct; the mamlutdar at the same time retaining a superintendence over them.

8. In serious offences which require to be forwarded to the sessions judge, it would be a great relief to the parties themselves, and also to the magistrate and his assistants, if the mamlutdars were permitted to forward them direct to the judge, reporting the same, either before or after committal, to the magistrate or his assistants: under the present system, the parties are forwarded by the village officer to the mamlutdar, and again to the assistant magistrate's office, and thence to the judge, thus incurring the annoyance, expense and labour of three journeys.

9. Were the police cases entrusted to the decision of the native officers in the Adawlut, prepared by those under the mamlutdar's authority, the system would evidently prove a bad one, and were the officers of the court themselves to prepare

pare them, the public would have further to go for justice than at present, as there are only six of the court's officers in this zillah, and 10 mamlutdars, not including Gokak, and at present, except during the monsoon, there are five assistants in the districts on permanent deputation.

I have, &c.

Belgaon, 3 September 1838. (signed) *A. Campbell*,
Third Assistant Collector and Magistrate.

(A true copy.)
(signed) *W. Simson*,
Acting Magistrate.

From *A. Bettington*, Esq., Assistant Magistrate, to *W. Simson*, Esq., Acting Magistrate, Zillah Belgaon; dated Belgaon, 5 September 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 22d ultimo, with enclosure, and beg to say, in reply, that the conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut, appears to me to be a measure in no way called for in this part of the country, and that further, it is pregnant with mischief, for the following reasons:

2. A good mamlutdar, in a reasonably-sized district, will seldom or ever pretend to say, that he cannot find time to settle his police cases without hinderance to his revenue duties. Where distance from the hoozoor or other circumstances render it necessary, the mamlutdar might be safely entrusted with extended police powers. If a person is really fit, in point of intelligence and integrity, to hold the powers our mamlutdars have at present, in the managing the collection of the revenue, there can be little risk or impropriety in increasing their police powers.

3. Again, from the peculiar way in which the revenue and police duties of the mamlutdar are mixed together, and the impossibility of his not having considerable local knowledge, he must always be a better thief-catcher and thief-trier than a moonsiff. A mamlutdar moves, or ought to move, continually about his district; a moonsiff is always stationary. Little is required in a moonsiff more than integrity and knowledge of Regulations; but for a good mamlutdar, considerable local knowledge, fertility in expedient, tact, bodily activity, a knowledge of the character of others, a mixture of firm and gentle in his own; each and all of these are necessary, as well as integrity and knowledge of Regulations.

4. If such be the case, I believe it will be admitted that it is easier to find a good moonsiff than a good mamlutdar; every thing, therefore, that tends to raise the position of the former at the expense of the latter, must be bad; it matters little whether the degradation be real or imaginary, provided importance is attached to the change by the individual himself, and by the natives generally.

5. I do not hesitate to say, that the natives generally regard the appointment of moonsiff as more respectable than that of mamlutdar, and well-connected natives would prefer the former appointment to the latter; the idea is a most mischievous one, as tending to make those best fitted avoid the post of mamlutdar, and this will always be the case as long as the present system prevails. I would chiefly notice two points, viz., the monthly inspection of the mamlutdar's cutcherry by the moonsiff, and the great disproportion in the rates of pay, as contrasted with the amount of labour and responsibility in the two classes of appointment.

6. The monthly scrutiny of the mamlutdar's treasury by the moonsiff, is considered as positively degrading to the former, and most certainly (to say the least) indicates an impolitic degree of distrust, and there are few mamlutdars who would not prefer giving security to any amount rather than submit to it. I would beg to urge, that it is needless as well as impolitic, as the same end might be obtained by taking security, and further, that it is little probable, in any talook under proper supervision, that the mamlutdar, sheristadar, nugde gomastha, shroff and gullie, would be found all rogues together, and unless such be the case, no tricks can be played with the treasure which the moonsiff in-

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spects monthly. In this division of the Southern Mahratta country, there are 11 talooks, of which the treasuries of five are monthly subjected to an inspection by the moonsiff, six are never inspected at all; but it has never yet been shown that the treasuries uninspected by the moonsiff have not been kept with as much regularity and order as those inspected. This obnoxious rule appears, therefore, to be unequal in its operation, humiliating to the mamlutdar, and useless to the public service.

7. The labour and responsibility attending the office of mamlutdar is greater than that of moonsiff, but the pay and promotion is less. The pay of the mamlutdars in the Southern Mahratta country, is either 120, 150 or 175; none higher than 175, the greater number 125 rupees a month, and there is no increase for length of service; the moonsiffs of different denominations draw (not including "sadilwar"), 100, 150, 200 and 350 rupees a month.

8. As to "the benefit to be derived by parties by avoiding a journey to the hoozoor," assistant magistrates being posted all over the country in charge of one or more districts, this advantage would appear to be an imaginary one, as the parties could find a magistrate as near at hand as a moonsiff.

9. I have never yet heard from others, or found myself, any evil resulting from the union of police with revenue duty; I know the very contrary to be the case, and that time is found, except in extraordinary cases, to discharge both; the so-called relief to the collector's department would be found to give, ere long, more trouble than if the police work were doubled.

10. I feel much more strongly than I can express, more strongly than my standing in the service and limited experience will authorize me to express, the mischievous tendency to the proposed measure. To give a moonsiff police power and a jurisdiction in the mamlutdar's talook, or to give the moonsiff the power of trying cases to be prepared and sent him by the mamlutdars, or in any shape or way to curtail the mamlutdar's police power, by putting him under the moonsiff, or giving the moonsiff a right of interference in police matters, would ere long produce incalculable disorder. We must judge of the future by past; we know what was the result of a system in the Madras territory, in which police and revenue functions were separated; the collector having little or no magisterial power, the mamlutdar no police authority, the evils resulting were enormous, and the detriment to the public service incalculable; the mamlutdar was a cypher, the collector little better; constant clashings and quarrels between the police and revenue subordinates, the revenue ill-collected and with great difficulty, the people harassed by contradicting orders from authorities themselves at variance, and the management of the districts altogether so vile, that Sir T. Munro broke up the system, joined police and revenue together, and confined to their proper limits the authority of the Adawluts.

11. No one will say that the present system is not capable of improvement; it may be infinitely improved. Some talooks should be divided; some are so large that it is physically impossible for any mamlutdar to manage them (Chickodee and Indee, for example). Remissness in the discharge of police duties should be severely punished; the police power of the mamlutdar might be increased, and a minor degree of power given to the peshkar or mamlutdar's deputy, subject to the mamlutdar's revision and approval; a graduated scale of the pay to the mamlutdars, equal to that paid to the grades of moonsiffs, the rate not to be fixed on the talook but on the individual, commencing from the lowest rate, and increasing on certified merit, of which the state of the talook, both in revenue and police, would furnish the best and surest index.

12. I have entered into what may be considered an unnecessary detail, but I have found myself unable without it to explain my meaning, or give my opinion as called for on this important point; most important, as far as police management generally, and the position of our mamlutdars are concerned.

I have, &c.
(signed) *A. Bettington*,
Assistant Magistrate.

Belgaum, 5 September 1838.

(True copy.)
(signed) *W. Simson*,
Acting Magistrate.

From

No. 3.
On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

From *E. S. Townsend*, Esq., First Assistant Collector and Magistrate, to *W. Simson*, Esq., Acting Collector and Magistrate; dated Suttigery, 30 August 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 22d instant, forwarding for my opinion copy of the Sudder Adawlut's circular of the 4th July, calling for your sentiments as to the advantages to be derived from conferring criminal jurisdiction on the native officers presiding in the Courts of Adawlut, with a view to relieve the collectors' department from a portion of their duties.

2. The question appears to be encumbered with difficulties in practice. From a reference to the object proposed, it would appear to be intended to confer magisterial duties on the moonsiffs, either, 1st, equal to those now entrusted to the mamlutdars; or, 2d, of a grade higher than these, but lower than those which now belong to the magistrate's European assistants; or, 3d, to grant magisterial powers equal to those now conferred on the latter class of officers.

3. According to the first of these suppositions, the Ameen, or native judge, would be also the district police officer, and take the magisterial duties which now devolve on the mamlutdar, leaving the latter none but his revenue duties. The obvious result of this measure would be to lessen the native revenue officer's duties; and, so far, it would be an undoubted benefit. It would not, however, be free from some serious difficulties. The Ameen, in his judicial capacity, would be subject to the judge, as at present; as district police officer, he would be subordinate to the magistrate and his assistant in charge of the district. He would thus be subject to two masters, and would, I fear, find it very difficult indeed to please them both. The numerous collisions of authority which would probably ensue, and the difficulty that there would be of avoiding them, will so readily suggest themselves to the mind of any officer acquainted with the routine of judicial and magisterial duties, that any detail of them would be a superfluous occupation of your time.

4. The effect of this measure on the efficiency of the mamlutdars would not, I apprehend, be on the whole beneficial. By the establishment of the Courts of Adawlut, and the appointment of native judges of various grades, with higher salaries and higher duties than those conferred on the native revenue authorities, the latter have lost much of their consideration and influence among the people, and the popularity of the service has undoubtedly much declined. The removal from the mamlutdars of their police duties would deprive them of considerably the greater share of their present influence; and this, while it would lessen the desire of men of respectable attainment to enter the service, would tend to increase the difficulties of the mamlutdar in executing his remaining duties in the collection of the revenues, and composing and arranging the variety of disputes which come before him in his double capacity of revenue and police officer.

5. A third objection to the proposed change seems to me to exist in the ambiguous nature of a large proportion of the complaints which come before the mamlutdar, either direct or by reference, and which sometimes are throughout judicial and revenue mixed together. The deciding when any dispute passes from revenue to police, or *vice versâ*, is at present a matter of comparatively small moment, as the authority in both departments is the same; were the authorities separate, the Ameen and mamlutdar would ever be running in each other's way.

6. Were the proposed measure to be the second, which I have stated in paragraph 2 of this letter, the native judge would be an assistant magistrate, with powers greater than those of a mamlutdar, and less than those of an European assistant magistrate. He would also, I conclude, be placed insubordinate to the latter. To this plan, the objection stated in paragraph 3, would apply, as much probably as to the first, while those stated in paragraph 4 would apply even more forcibly, as the mamlutdar would remain in charge of the police, the cases forwarded to the native judge must be prepared by him, and the former must, I presume, be authorized to direct the mamlutdar, and to reprove him in case of negligence or irregularity.

7. How far such an authority could advantageously be vested in the native heads of any one department over those of another, will be best understood by those who are acquainted with the state of education and feeling among our native servants of the Deccan and Dooab; I certainly do not think that they

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are at present qualified, either to exercise such an authority with discretion, or to be subject to it with good will.

8. The objections urged in paragraph 5 of this letter, would, to a certain extent, apply to this plan, though with less force than to the first, but in its place occurs the difficulty that there would probably exist, in causing an attention to the Regulations by both parties, were cases forwarded by the mamlutdar and decided by the native judge.

9. I rarely receive a magisterial case from one of my mamlutdars, which does not call for some reprimands for inattention to the Regulations in a variety of particulars, where native servants in these districts appear to have but a very slight knowledge of the Regulations, and to pay very small regard to the liberty of the subject, or to the inconvenience suffered by those who are called to attend their cutcherries. It is true, that "a press of business" is the ready excuse when any fault is found because of these delays, but a little inquiry into the detail of many of these cases, will show that most of the delays are such as cannot have any connexion with a press of other business, while the great want of discrimination continually shown in classing offences, in estimating evidence, and otherwise in conducting the preliminary police duties, appears to me to prove the necessity of keeping our police district officers under direct European superintendence.

10. If the plan in contemplation be the third that I have supposed in paragraph 2 of this letter, the objection raised in paragraph 3, would, to a certain extent, apply, while that in paragraph 4 would undergo some modification. The native judge would be raised so much above the mamlutdar, that the jealous feeling of interfering authority would be annihilated by the great disparity of their situations. The danger of collision would now be transferred from the mamlutdar to the European assistant; and how the plan could be managed so as to avoid this unpleasantness, can be best understood by those who, having originated it, have no doubt considered its more minute details in practical operation.

11. Long journies to the hoozoor are indeed a very heavy grievance; but surely the root of the evil is the paucity of European stations (the offspring of a false economy) and the consequent distance of the extremities of overgrown zillahs or collectorates from the seats of justice, which, to the injury of the people, are few and far between; while the establishments of the mamlutdars are unequal to their heavy duties, an evil which, as it has been remedied in the Deccan through the Revenue Commissioner's influence, will, I trust, be corrected here through your exertions.

I have, &c.
(signed) *E. H. Townsend*,
First Assistant Collector and Magistrate.

First Assistant Collector and Magistrate's Office,
Suttegery, 30 August 1838.

(True copy.)
(signed) *W. Simson*, Acting Magistrate.
(True copies.)
(signed) *A. Spens*, Acting Deputy Register.
(True copies.)
(signed) *L. R. Reid*, Acting Chief Secretary.

Leg. Cons. 21 Oct. 1839. No. 15.

(No. 452.)

From *J. P. Grant*, Esq., Officiating Secretary to Government of India, to *J. C. C. Sutherland*, Esq., Secretary to Indian Law Commission; dated 21 October 1839.

Sir,

I AM directed by the honourable the President in Council to request you will lay before the Indian Law Commissioners, for their consideration, the accompanying copies of letter from the Acting Chief Secretary to the Government of Bombay,

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Bombay, under date the 3d instant, and of its enclosure, containing the opinions of judges and magistrates under the Presidency, on a proposition to vest the native judicial functionaries with penal jurisdiction.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 21 October 1839.

(No. 12.)

From the Indian Law Commissioners, to the Honourable the President of the Council of India in Council; dated 17 May 1843.

Honourable Sirs,

In our report to the Right honourable the Governor-general of India, dated the 2d July 1842, a copy of which we submitted to your Honour in Council, under date the 4th of August 1842, we gave an account of the several judicial establishments existing within the Presidencies of Bengal, Madras and Bombay.

Leg. Cons. 5 July 1843. No. 14.

2. In preparing that account, our attention was drawn to the want of conformity in the systems of these Presidencies, in regard particularly to the three classes of judges who are designated respectively as Principal Sudder Ameens, Sudder Ameens and moonsiffs, and we were led to consider what modifications might be conveniently introduced at present, in order to assimilate the native judicatories throughout India more nearly, and to render them more efficient for the administration of both civil and criminal justice.

3. We now beg leave to submit to your Honour in Council a Report, containing our observations and suggestions on this subject, in which, while we have had a regard to existing exigencies, we have kept in view the great object of a general system of judicature to be introduced eventually, recommending such measures only as we think calculated to promote that object, and capable of adaptation to the sytem which we have in contemplation.

4. In this report we take the opportunity to submit our sentiments on the question of vesting the native judicial functionaries in the Presidency of Bombay with penal jurisdiction, referred to us for consideration in the papers noted in the margin.*

*From Secretary to Government of India to the Law Commissioners, 20 April 1835.
From Secretary to Government of India to the Law Commissioners, 21 Oct. 1839.

5. In the sequel we shall proceed to point out reductions in the judicial establishments of Bombay, which we conceive will be feasible, in consequence of the employment of the Principal Sudder Ameens of that Presidency in the manner we recommend.

6. In Bengal and Bombay, the Principal Sudder Ameens hold their courts at the stations of the zillah courts. Their jurisdiction in original suits is unlimited in respect to the amount or value of the subject of litigation, but the suits are instituted in the zillah courts,† and are referred to the Principal Sudder Ameens by the judges of those courts.

Native Judicatories in the several Presidencies compared.
Civil Jurisdiction: Principal Sudder Ameens.

7. In Madras, hitherto, the Principal Sudder Ameens have held courts auxiliary to the zillah courts, at detached stations, and have had authority to receive and try original suits arising within the districts especially subjected to their jurisdiction, to the same amount as the suits cognizable by judges of the zillah courts; viz. 5,000 rupees. In the plan proposed for the reform of the Madras judicial system, it is intended that the courts under Principal Sudder Ameens, wherever they are established, shall take the place of the old zillah courts. In the draft Act which has been published, their jurisdiction is extended so as to embrace suits to any amount or value under 10,000 rupees.

† Except in cases provided for by sect. 17, Reg. VII. 1832 of the Bengal code.

8. The Principal Sudder Ameens of the Bengal Presidency are divided into two classes, in the proportion of one-fourth to the first class and three-fourths to the second; the salary of the first class being 600 rupees a month, and of the second class 400 rupees. In the Presidencies of Madras and Bombay, the Principal Sudder Ameens are all of one class. In Madras the salary is uniformly 500 rupees a month. In Bombay it varies from 500 rupees to 467. 8 rupees, a difference which is understood to arise from some difference in the currency in which the establishments in the respective districts were paid before the general introduction of the new coinage of 1833.

9. In Bengal, the jurisdiction of Sudder Ameens is limited to suits for an amount or value not exceeding 1,000 rupees; in Madras the limit is 2,500 rupees;

Sudder Ameens.

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rupees; in Bombay 10,000 rupees. In Bengal and Madras generally, and in Bombay at the Sudder stations of zillahs, Sudder Ameens exercise jurisdiction only in cases referred to them. In Bombay, Sudder Ameens at detached stations have the power of filing and trying suits subject to their cognizance, without a reference. The salary of the Sudder Ameens of Bengal is 250 rupees a month; of Madras 200 rupees; in Bombay it varies, from the cause above mentioned, from 350 rupees to 327. 8 rupees.

Moonsiffs.

10. In Bengal, the jurisdiction of moonsiffs is confined to 300 rupees; in Madras it is extended to 1,000 rupees; in Bombay to 5,000 rupees. The moonsiffs in all the Presidencies (except in Bombay, those located at Sudder stations) are competent to admit and proceed to the trial of suits liable to their jurisdiction, without a reference from superior authority. In Bengal the moonsiffs are of two classes, the salary of the 1st being 150 rupees, and the second 100 rupees. In Madras there are three classes; viz.

First Class - - - - - -	Salary 140 rupees.
Second Class - - - - - -	ditto 115 ,,
Third Class - - - - - -	ditto 100 ,,

In Bombay also there are three classes; viz.

First Class. Salary, varying for the reasons above mentioned from - - - -	Rs. 200 to 187 –
Second Class - - - - - -	150 to 140 8
Third Class - - - - - -	100 to 93 8

Bengal.

Appellate Jurisdiction, Principal Sudder Ameens. Madras.

11. In Bengal, Principal Sudder Ameens are competent to exercise jurisdiction in appeals from decrees of Sudder Ameens and moonsiffs, by reference from the judge under special authority from the Sudder Dewanny Adawlut, their cognizance being confined of course to cases not exceeding 1,000 rupees, to which the jurisdiction of Sudder Ameens is limited. In Madras, hitherto, Principal Sudder Ameens have adjudicated of their own authority upon appeals from the Sudder Ameens and district moonsiffs subordinate to them; that is to say, to the amount of 2,500 rupees, to which the jurisdiction of Sudder Ameens extends. Under the new system they will be competent to adjudicate upon appeals from district

Bombay.

moonsiffs only, and that generally * by reference from the judge. In Bombay; Principal Sudder Ameens are competent to adjudicate upon appeals from decrees of Sudder Ameens and moonsiffs, in cases to the amount of 100 rupees only, by reference from the judge.

Sudder Ameens.

12. In Bengal and Bombay, Sudder Ameens are not permitted to exercise jurisdiction in appeals; and in Madras, under the new system, they will be divested of the appellate jurisdiction heretofore exercised by them.

Criminal Jurisdiction, Bengal.

13. In Bengal, Principal Sudder Ameens and Sudder Ameens are authorized to adjudicate in criminal cases referred to them by magistrates, and to pass sentence of punishment not exceeding 15 days' imprisonment, and a fine of 50 rupees, commutable to 15 days' further imprisonment for petty offences, and one month's imprisonment, which may be extended to a second month in lieu of corporal punishment for petty thefts.

Madras.

14. In Madras, Principal Sudder Ameens have a stated criminal jurisdiction of their own, within the limits of the districts subject to their courts, and are empowered to pass sentence to the extent of two years' imprisonment in special cases, and of six months' ordinarily, with corporal punishment or a fine, commutable for imprisonment for a further period of six months. Sudder Ameens are authorised to exercise a similar jurisdiction, and to pass the like sentences in cases referred to them by criminal judges, joint criminal judges or Principal Sudder Ameens.

Bombay.

15. In Bombay, not even the Principle Sudder Ameen is authorized to exercise criminal jurisdiction in any case.

Changes recommended.

16. We proceed to state the changes which, as conducive to uniformity of system and otherwise expedient, we would now recommend.

Principal Sudder Ameens' Civil Jurisdiction.

17. With respect to Principal Sudder Ameens, in our Report, under date the 4th December 1841, we have already proposed that in Bengal, as in Madras, the original suits cognizable by the judges of this class should ordinarily be received and

* *Note.*—When a Principal Sudder Ameen holds his court at a place remote from the station of the zillah court, Government may authorize appeals from district moonsiffs to be preferred to him immediately.

and tried by them of their own authority, without a reference from the zillah judge, a change of procedure which, under the orders of Government, was provided for in the draft of Civil Regulations for Bengal, prepared by Mr. Millett. This change of procedure we would extend to Bombay.

18. In the same Report, we proposed that in Madras, as in Bengal and Bombay, the jurisdiction of the Principal Sudder Ameens should be free from any pecuniary limitation. This suggestion has not been adopted; but in the published draft of an Act for reforming the Madras judicial establishments, the jurisdiction of the Principal Sudder Ameens, as well as of assistant judges, has been extended, as we have before observed, so as to embrace suits to any amount less than 10,000 rupees. We are aware that the new limitation has reference to the jurisdiction of the Privy Council, but we do not know for what reasons it has been thought fit to apply it to the assistant judges and Principal Sudder Ameens of Madras, while the jurisdiction of the Principal Sudder Ameens of Bengal and Bombay is unlimited. It is to be observed, that the jurisdiction of the Sudder Ameens of Bombay extends to 10,000 rupees. We would repeat our recommendation, that the Madras system be brought in unison with those of Bengal and Bombay on this point.

19. We would further recommend, that in Bombay, as in Bengal and Madras, the Principal Sudder Ameens be empowered to hear and determine appeals from decrees of moonsiffs in suits within the limitation of 1,000 rupees, on reference from the zillah judge; and that in Bengal the zillah judge be empowered generally to make such reference at his discretion, without special authority from the Sudder Court.

Principal Sudder Ameens' Criminal Jurisdiction.

20. We have noticed, that while the Principal Sudder Ameens in both Bengal and Madras are vested with criminal jurisdiction (to a much greater extent in the latter than in the former), such jurisdiction is not committed to the Principal Sudder Ameens of Bombay.

From Secretary to Government of India, 20 April 1835.
From Officiating Secretary to Government of India, 21 Oct. 1839.

21. Mr. Anderson, now a member of the Government of Bombay, in a report made by him in 1834, first suggested that it might be advisable to vest the native commissioners "with a part of the administration of criminal justice." In 1837 the subject was discussed by the judicial officers of that Presidency on a reference from the Law Commissioners, which was made with a view to the preparation of a code of criminal procedure. In 1839 the subject again attracted attention, and the judges of the Sudder Adawlut, in submitting to Government the sentiments of the subordinate judges and magistrates upon it, expressed on their own part an opinion, "that the principal, indeed the only objection, to vesting the native civil functionaries with criminal powers, was their heavy duties, so that if the system were introduced generally, a considerable increase to the number of native judges would be required."

22. Considering this objection with reference to the Principal Sudder Ameens and Sudder Ameens, we find by returns we have lately received, that the time of the judges of both of these classes has been almost entirely occupied in the trial of cases which are within the jurisdiction of the moonsiffs, and therefore ought to be disposed of by them.

23. In the year 1838, to which the returns relate, there were only 19 suits above 10,000 rupees, and therefore properly belonging to their jurisdiction, decided by the six Principal Sudder Ameens, whilst they decided 12 suits ranging from 5,000 to 10,000 rupees, and therefore properly belonging to the jurisdiction of Sudder Ameens, and 2,686 not exceeding 5,000 rupees, and therefore within the jurisdiction of moonsiffs, of which only 46 were above 1,000 rupees.*

24. The 14 Sudder Ameens decided only six suits above 5,000 rupees, that is, beyond the jurisdiction of the moonsiffs, whilst they decided 7,533 suits within that limit, of which only 44 were above 1,000 rupees.

25. If

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* Total Number decided by Principal Sudder Ameens - - - - 2,717
Above 5,000 rupees - - - - - - - - - - 31

2,686

Suits within the jurisdiction of moonsiffs decided by Principal Sudder Ameens and Sudder Ameens - - - - - - - - 7,533

10,219

Infra, para. 31.

25. If the Principal Sudder Ameens be relieved ordinarily, as we propose, from the cognizance of suits not exceeding 5,000 rupees, the limit to which the jurisdiction of the moonsiffs is confined, there can be no doubt that they will have ample time for other duties; and we are of opinion that it is expedient to employ them in the administration of criminal justice. Entrusted as they are, and have been, for a long time, with power to adjudicate in matters of property without any limitation, we see no reason to hesitate as to investing them with penal authority. We propose that the same powers be conferred on them as are vested in the Principal Sudder Ameens of Madras, or more precisely, with reference to the code of Bombay, the powers ordinarily exercised by assistant session judges in that Presidency extending to the award of imprisonment with hard labour for two years.

26. We would recommend, also, that the penal jurisdiction of the Principal Sudder Ameens in Bengal be extended, so as to correspond nearly with that already vested in the Principal Sudder Ameens of Madras, and now proposed to be vested in those of Bombay; that is to say, that the magistrates be authorized to refer to them, or to direct the police to transmit to them immediately, cases below the jurisdiction of the session courts, but above that which Principal Sudder Ameens, in common with Sudder Ameens and the law officers of the courts, are at present competent to exercise. We are of opinion that, on the criminal side of the court, as well as on the civil, the Principal Sudder Ameens should be relieved from the cognizance of petty cases, and that appeals from decisions of Principal Sudder Ameens in all cases disposed of by them, should lie to the sessions judge only. It will be seen below, that we contemplate the employment of moonsiffs in the criminal department, with powers equal to those now vested in Principal Sudder Ameens, Sudder Ameens and law officers, so that due provision may be made for the disposal of petty cases.

Infra. para. 45.

Sudder Ameens' Civil Jurisdiction.

1,000 rupees.

Supra, para. 24.

27. In Bengal, the civil jurisdiction of Sudder Ameens coincides as to maximum amount or value with that of the district moonsiffs in Madras, and we find by returns we have lately received, that practically, as well in Madras as in Bombay, the jurisdiction exercised by the Sudder Ameens falls almost wholly within the same limit. In Madras, on an average of three* years, the number of suits for an amount exceeding 1,000 rupees referred† to Sudder Ameens was only 59 per annum, the whole number referred to them being 7,087.

28. In the Lower Provinces of Bengal, of 3,400 suits pending before Sudder Ameens at the end of 1841, the number in which the amount in dispute exceeded 300 rupees, to which the jurisdiction of moonsiffs is confined, was 1,691; the number within that limit was 1,709, consisting for the most part of suits involving matters which are at present especially excluded from the cognizance of moonsiffs, of which a very large portion related to lakhiraj lands, cases which are not excluded from the jurisdiction of moonsiffs in Madras and Bombay.

Moonsiffs.

29. We are not aware of any reason why the jurisdiction of moonsiffs in both the Upper and Lower Provinces of the Presidency of Bengal should not be as extensive as that of the same class of judges in Madras, and we think it expedient that it should be assimilated thereto, by extending the judicial cognizance of the former to suits for a value not exceeding 1,000 rupees. In offering this suggestion, we have considered that the experience which the Bengal moonsiffs have had under the existing system, which has now been in operation for more than 10 years, has no doubt given them a degree of judicial ability fully adequate to the extended jurisdiction we propose to assign to them, and that under the system of examination lately introduced, there is reason to expect their successors will enter upon their offices with superior qualifications.

30. We are informed that it is already in the contemplation of Government to empower the moonsiffs of Bengal to take cognizance of all suits within the limit of 300 rupees, at present specially excepted from their jurisdiction. By this measure, which we would strongly advocate, one-half of the business of the Sudder Ameens would be cut off, and if the jurisdiction of the moonsiffs should be further extended, as we propose, the whole would be withdrawn from them.

Since this was written the exceptions referred to have been removed by Act No. VII. of 1843, sect. 7.

Sect. 7, Reg. V. of 1831.

31. By the existing law of Bengal, it is prescribed that all suits within the competency

* With a few exceptions, the average is taken from the three years 1838, 1839, 1840.

† The Return does not show the number decided.

competency of a moonsiff to decide, shall ordinarily be instituted in the moonsiffs' courts. We recommend that a similar provision be enacted for Madras and Bombay.

32. We would further recommend that, in Madras as well as in Bengal, all suits within the pecuniary limit of the jurisdiction of moonsiffs, be made subject to their cognizance, with exception only of cases in which they are directly or indirectly interested.*

33. In proposing that all suits for an amount within the competency of moonsiffs, shall ordinarily be instituted in the moonsiffs' courts in all the Presidencies, we intend to admit of exceptions for special causes. We think that everywhere the zillah judge should have power, as provided by section 7, Regulation V. of 1831, of the Bengal code, to receive such suits (or to call them up when they have been instituted in the court below), and to try them himself, or to refer them for trial to any other court subordinate to his authority, whenever he may see sufficient reason for so doing, and we would extend this provision to suits ordinarily cognizable by Principal Sudder Ameens, as was proposed in the draft of Civil Regulations prepared by Mr. Millett.

Part II., sect. 47, clause 1.

34. Should the changes here recommended be adopted, it is manifest that there will be no occasion for the services of Sudder Ameens in any of the Presidencies, for the purpose of civil judicature. In Bengal there would be no cases left for their judicial cognizance.† In Madras and Bombay, as we have shown above, so very few as to be unworthy of consideration. The appellate jurisdiction heretofore exercised by this class in the Madras Presidency, it has been already determined to withdraw.

35. In Bengal and Madras, as we have noticed, the Sudder Ameens are empowered to exercise a certain jurisdiction in criminal cases referred to them; but in Bengal the service rendered by them in this branch is inconsiderable,‡ and may, we conceive, be otherwise better provided for. And in Madras, under the arrangements which are about to be made for reforming the judicial establishments with the enactment suggested above, to confine the original cognizance of suits falling within the jurisdiction of district moonsiffs to those functionaries, whereby the civil business of the assistant judges and Principal Sudder Ameens will be greatly lightened; § we apprehend that the latter officers will be fully equal to the performance of the criminal business of the new courts, without the assistance of Sudder Ameens, diminished as that business will be by the concurrent jurisdiction proposed to be given to magistrates.

Sudder Ameens' Criminal Jurisdiction.

Sect. 55 published Draft Act.

36. It appearing, therefore, that there is no need for a class of native judges intermediate between the Principal Sudder Ameen and the moonsiff, we recommend that the office of the Sudder Ameen be abolished.

Abolition of the office of Sudder Ameen recommended.

37. We conceive that it would not be necessary to make a great addition to the establishment of moonsiffs in Bengal, to provide for the civil business proposed to be transferred to them from the Sudder Ameens.

Arrangements in consequence.

38. We find that in the Lower Provinces the average number of suits decided on trial by Sudder Ameens in the two years, 1841–42, was 3,358. In the same year the number of moonsiffs was 222, besides whom, 17 Sudder Ameens officiated as moonsiffs; supposing these to have given two-thirds of their time to the business of moonsiffs, they would be equivalent to 11 additional moonsiffs. We may, therefore, for the present purpose, consider the establishment as consisting of 233 persons, among whom the number of suits decided by the Sudder

1841 - -	3,006
1842 - -	3,710
Average -	3,358

* This appears to be the rule at present with regard to the moonsiffs of Bombay, to whom, under the title of Junior Native Commissioners, the provisions of section 2, Act XI. of 1836 is applicable.

† We find, by a statement obtained from the Sudder Court, that already in fifteen districts of the Lower Provinces, there are 17 Sudder Ameens employed as moonsiffs.

‡ Out of 65,272 prisoners apprehended in 1841, and brought before the magistrates and their subordinates, including Sudder Ameens, only 3,217, not quite five per cent, were tried by Sudder Ameens.

§ Total number of suits filed in zillah and auxiliary courts on an average of 3 years - 9,088
Above the jurisdiction of district moonsiffs - - - - - - - - - 216

Within the jurisdiction of district moonsiffs - - - - - - - - - 8,872
Referred to Sudder Ameens - - - - - - - - - - - 7,028

Remainder before superior judicial functionaries, from which they would be relieved by the proposed arrangement - - - - - - - - - - - 1,844

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Sudder Ameens being divided, would give an average of about 14 additional suits per annum to each. For an increase not exceeding this average, it may be thought that no provision need be made; but the increase is likely to be considerably above the average in particular districts, and we apprehend that it would be necessary to make some addition to the establishment to provide for such cases.

39. In the last two years, the moonsiffs have decided on an average 59,616 suits per annum, which, divided among the whole body, assumed as above to consist of 233 persons, gives an average of 255 to each. Adding the average number of suits decided by the Sudder Ameens, the total is 62,974, for the disposal of which we think an addition of nine moonsiffs (besides the 11 to replace the Sudder Ameens now employed as moonsiffs) would be a sufficient provision. With this addition to the establishment, the number of suits to be disposed of by each moonsiff would be on an average 260 instead of 255 per annum.*

40. It may be presumed that an increase in about the same proportion would suffice also in the Upper Provinces. This would add four to the present number of moonsiffs in those provinces. There would then be in the two divisions of the Presidency of Bengal, 13 additional moonsiffs to do the proper work of the present Sudder Ameens, and 11 in the Lower Provinces † to take up the work within the present jurisdiction of moonsiffs now done by Sudder Ameens, total 24.

9
4
13

41. In Madras, by the changes proposed, the number of suits before the moonsiffs would be increased by nearly 9,000 per annum,‡ of which it may be assumed that about 5,000, or 55 per cent would fall to be decided on the merits. For disposing of this new business at the present average of work, an addition to the establishment of 20 moonsiffs would be sufficient. But under the new judicial system for Madras, there must be a Mahomedan law officer for each court in which sessions are to be held for the trial of cases now cognizable by the courts of circuit, to assist the judge at the sessions. Upon our plan, these law officers, now intended to be Sudder Ameens, would be included among the moonsiffs; and as perhaps a third part of their time, or two days in the week on the average, would be occupied in attending at sessions, it seems to be necessary to make an allowance on this account. The number of moonsiffs required to serve as Mahomedan law officers under the intended arrangement, would be 20; and assuming that they would be able to decide only two-thirds of the average number of suits decided by each moonsiff at present, there would be required about seven more to dispose of the additional business, or 27 in all.§

42. In Bombay, for the work heretofore done by the Principal Sudder Ameens and Sudder Ameens ‖ now proposed to be transferred to moonsiffs; it would probably

* 1841 - - - - - - - - - - - 58,654
1842 - - - - - - - - - - - 60,578

Average - - - - - - - - - - - 59,616

59,616 ÷ 233 = - - - - 255

59,616 | 233
3,358 | 9

62,974 ÷ 242 = - - - - 260

† It is possible that a similar arrangement may have been made in the Upper Provinces, in which case this calculation will require some modification.

‡ Average number of suits for an amount within the jurisdiction of moonsiffs, filed in the zillah and auxiliary courts, as above noted, 8,872.

Number of suits decided on the merits by moonsiffs in 1839, 24,483÷98=250; 250×20= 5,000.

§ Present average - - - - - - - 250

Two-thirds - - - - - - - - - 167
Moonsiffs acting as law officers - - - - 20
— 3,340

Present average - - - - - - - - - 250
Moonsiffs not required to act as law officers - - 7
— 1,750

5,090

‖ Number of cases within 5,000 rupees decided by Principal Sudder Ameens and Sudder Ameens, 10,219, Vide *supra*, para. 24.

probably be necessary to increase the establishment by an addition of 20 moonsiffs; viz. six to take up the work of the Principal Sudder Ameens, and 14 that of the Sudder Ameens. It is to be observed, that the average work done by the Principal Sudder Ameens and Sudder Ameens of Bombay, has hitherto exceeded the average of that done by the moonsiffs,* while the reverse has been the case in Bengal and Madras. 6 Principal Sudder Ameens, 14 Sudder Ameens.

43. In the above scheme we have had in view only to provide for the additional civil business proposed to be committed to the moonsiffs; but looking to the criminal department, and seeing that in Bengal there is not only the service now performed by the Sudder Ameens to be provided for, but that performed by Principal Sudder Ameens also, since we propose that the latter shall be relieved from the cognizance of the petty cases which are now referred to their jurisdiction, we think that a further measure is requisite to meet this exigency. It is true that we propose to extend the jurisdiction of the Principal Sudder Ameens, and that this will relieve the magistrates from some of the work now done by them, but the time they will thus gain we think should rather be given to their important duties as superintending and controlling officers, than to the personal investigation of petty offences. The measure which suggests itself, as a ready means to afford the desired aid, is to invest some or all the moonsiffs of the zillah with the same criminal jurisdiction as is now exercised by the Sudder Ameen.

44. In the general scheme of judicature we have in contemplation, one principle is, that each court of every class should be charged with both civil and criminal jurisdiction. We think this a fit opportunity to recommend the introduction of that principle in regard to the moonsiffs' courts in Bengal, by which their constitution will be assimilated to that of all the superior courts, and the system will be made uniform throughout. For the immediate object of providing for the petty cases now disposed of by Principal Sudder Ameens and Sudder Ameens, it might be sufficient to commit the proposed jurisdiction to one moonsiff only, selected for the purpose, and located at the station of the zillah court. This would probably be as good a provision as that which obtains at present; but there is an urgent demand for a better provision. In Bengal alone, of all the Presidencies, a man must go from the remotest corner of a zillah to the Sudder station to seek redress for any petty offence committed by his neighbour. In Madras and Bombay, the heads of villages have a certain jurisdiction in petty cases; above them the heads of district police have jurisdiction. In Bombay these officers are empowered ordinarily to punish cases of theft, abuse, assault, &c., by fine not exceeding 15 rupees, and confinement not exceeding 20 days, which power may be extended by special authority of Government to imprisonment for two months, a fine of 30 rupees, and 30 stripes. In Madras, the jurisdiction of the tahsildar, or head of district police, embraces thefts punishable by 10 days' confinement with hard labour, and petty offences punishable by fine of three rupees, commutable to imprisonment for three days. In Madras and Bombay, the magistrates, joint magistrates and assistant magistrates, make frequent tours through their districts and divisions, and hold courts on the spot for the trial of cases within their jurisdiction, as charges are preferred to them. Thus, while in Bengal there is no provision for the cognizance of criminal charges, from the least to the greatest, except at the Sudder station, in the other Presidencies the people may obtain redress in small matters at their very doors, and generally in petty cases at no great distance from home; and it is only in cases of some importance, in Bombay particularly, that they must go to the Sudder station to obtain justice. This defect in the Bengal system, from which, no doubt, there is in effect a denial of justice in petty cases to the generality of the people who live at a distance from the courts, may be easily remedied by conferring upon the moonsiffs the jurisdiction proposed, with which we feel confident they may be safely trusted.

45. We observe that the honourable Court of Directors, in the 7th paragraph of their letter, dated the 20th January 1836 (No. 1 of 1836), suggested that the magistrates should be directed to hold their courts, not at the Sudder station alone, but at various places within their jurisdiction, so as to render justice more easily accessible by bringing it nearer to the homes of the parties. It will be more

* Average of suits decided by Principal Sudder Ameens, per annum - - 473
By Sudder Ameens - - - - - - - - - - - - - 584
By Moonsiffs - - - - - - - - - - - - - 411

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more in the power of the magistrates to proceed in this manner, if they should be authorized as we recommend, to refer the higher cases subject to their jurisdiction to the Principal Sudder Ameens; and we think it is desirable that they should frequently make circuits, as suggested by the honourable Court, following the practice of the magistrates of Madras and Bombay in this respect. But such occasional visitations would be more serviceable for other more important objects, especially such as are connected with the administration of the police, than that which the court had in view. To bring justice home to the people in the cases of ordinary occurrence among them, it is necessary that there should be fixed local tribunals. We would recommend, therefore, that the moonsiffs generally be vested with criminal jurisdiction, to the extent of the powers now vested in Principal Sudder Ameens, Sudder Ameens and law officers, to be exercised in cases sent to them by the magistrates or darogahs within their bounds, and in complaints preferred directly to them of calumny, abusive language, slight trespass or inconsiderable assault.

46. We desire to provide for two objects, each of the greatest importance; first, to make justice more easily accessible to the mass of the people in the cases in which they are most concerned; and, secondly, to relieve the magistrate and his assistants, and set them free, to give attention mainly to the working of the police, that it may be stimulated to activity, and rendered more efficient for all its legitimate purposes, and at the same time so restrained, that it may be a terror to evil doers only, and not, as there is too much reason to apprehend at present, the dread equally or more of the honest and peaceable. In order so to quicken and control the police, it is necessary that the subordinate agents should be made to feel the superintendence of the magistrate. This will be the case when they are visited frequently by the magistrate or his assistants; they will then be influenced continually by the expectation of his presence. The people, on the other hand, will be encouraged to resist oppression, when they have a prospect of being righted by an appeal to the magistrate on the spot. They will be forward to seize the opportunity of such visits, to bring to the notice of the magistrate any neglect or delinquency of the police by which they have suffered. The magistrate not only giving ready attention to their formal complaints, but conversing with them in their villages, as he traverses the district under his charge, will have means of information at present inaccessible to him, but obviously necessary, to enable him to do his duty effectually in this most important function of his office. We believe that much of the evil of the present system of police, of which there is such frequent and apparently such just complaint, might be corrected by the magistracy being enabled to keep up a pervading superintendence and control in the manner above indicated. By the arrangements we propose, being relieved, partly by the Principal Sudder Ameens and partly by the moonsiffs, from the greatest portion of their judicial business, which now occupies them so fully, it will be in their power to apply themselves effectually to this object.

47. If we considered the amount of criminal business now disposed of in the Presidency of Bengal by Principal Sudder Ameens and Sudder Ameens as indicating pretty nearly what may be expected to fall to the moonsiffs under the proposed arrangement, we should be doubtful of the necessity of making much addition to the establishment, beyond what is proposed with a view to the civil business; but we deem it certain, that when the cases which we propose to be brought under the jurisdiction of the moonsiffs can be adjudicated so near to the homes of the parties concerned as that arrangement will admit of, the number of complaints preferred will be very greatly increased. We further suppose, as we have observed, that most part of the cases of a nature to be cognizable by the moonsiffs, which are now disposed of by the magistrates and their assistants, will, under the new plan, be left to be disposed of by the former. Indeed, we think that the magistrates should be enjoined to instruct their police officers not to send cases of this description to them when the court of the moonsiff is nearer, or as near, except for special reasons.

48. In the Lower Provinces of the Bengal Presidency, the whole number of persons apprehended and brought before the magistrates and their subordinates, including the Principal Sudder Ameens, Sudder Ameens and law officers, in 1840 was 64,192, and in 1841 was 65,272, of which 47,453 in 1840, and 48,170 in 1841, were charged with petty offences, such, we apprehend, for the most part,

as

as will be cognizable by the moonsiffs under our plan.* Assuming the number of petty charges to be doubled eventually under the proposed arrangement, the number of persons to be tried may be reckoned at about 95,000. And supposing the law officers to take as many cases as at present† (and they should take generally those arising within a certain distance from their stations), and the magistrates and their assistants only about as many more, there would remain about 80,000 persons, or say from 40,000 to 45,000 cases per annum, ordinarily to be disposed of by the moonsiffs. We have already proposed an addition of 20 moonsiffs to the present establishment of the Lower Provinces, on account of civil business, and we are inclined to think that a further addition of 26 moonsiffs, at the rate of one for each zillah, would be sufficient on account of the criminal business. The total number of moonsiffs would then be 268,‡ and there would be on an average about 168 cases per annum to each, or, taking the year to consist of 10 working months, about 17 cases a month, while by the increase to the establishment, the average number of civil suits to be decided by each moonsiff would be reduced from 260 to 235 per annum. We presume that a like provision would be sufficient also for the Upper Provinces. 62,974÷268=235.

49. The result would be an addition of 69 moonsiffs in the two divisions of the Presidency of Bengal, making the total number 388.§

50. In Madras, a similar arrangement is not so much required; but we think it very desirable that the district moonsiffs should be authorized to take cognizance of cases above the jurisdiction of the tahsildars, sent to them by the magistrates or district officers of police, with powers of punishment equal to those now ordinarily exercised by the magistrates. We do not at present recommend this measure for Bombay, as the ordinary powers of the heads of district police in that Presidency are little short of those proposed to be vested in the moonsiffs of Bengal and Madras, and the Government has authority to vest them with greater powers, at discretion.

51. We understand that the Madras Government was lately invited to consider the expediency of vesting the district moonsiffs of that Presidency with criminal powers, and that the measure was objected to, not on principle, but on the ground that many of the district moonsiffs have not time at present to

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* 1840 - - - - - - - - - - 64,192
1841 - - - - - - - - - - 65,272

Average - - 64,732

PETTY OFFENCES.

1840 - - - - - - - - - - 47,453
1841 - - - - - - - - - - 48,170

Average - - 47,811

Average - - 47,811 × 2=95,622

	Cases.	Persons.
† 1841 - - - - - - - -	4,318	7,662
Add for Magistrates, &c. - - -	4,318	7,662
	8,636	15,324

Madras 1839–40:
Number of Persons before District police - - - 109,083
Village police - - - 5,700
Magistrates - - - - 7,992

‡ Present number of Moonsiffs - - - - - - - - 222
Add on account of civil business - - - - - - 20
criminal business - - - - - 26
—— 46
268

45,000 ÷ 268= 168 nearly.

§ Lower Provinces:
Present Number - - - - - 222
Add for new civil and criminal business 46
268
120
388

Upper Provinces:
- - - - - - - - - 97
Add for civil business - - - 4
for criminal - - - - 19
120

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to perform their civil duties. This is averred generally, without being supported by details of the work done by the moonsiffs.* We find that the average number of regular suits decided on the merits by the moonsiffs in this Presidency, is less than in Bengal, and much less than in Bombay. With the addition we propose on account of civil business, the number of moonsiffs will be increased to 127,† and even if the whole number of persons now tried by the magistrates and assistants were in future to be tried by the moonsiffs, the number that would come before each moonsiff on the average would be only about 63 per annum,‡ involved in from 30 to 40 cases, or for 10 working months, three or four cases a month. It appears to us, therefore, that the additional burden on the moonsiffs by the measure proposed, would be so inconsiderable, that there is no reason to doubt of their being able to dispose of it without any further increase to the establishment.

52. Assuming the number of moonsiffs required for the two divisions of the Presidency of Bengal, under the proposed arrangement, to be 388, as above stated, of this number we would assign 38, or about one-tenth to a first class, with a salary of 200 rupees a month each; of the remainder we would assign one-fourth, or 87, to a second class, with the salary of 150 rupees, now allowed to the first class, and three-fourths, or 263, to a third class, with the salary of 100 rupees, allowed at present to moonsiffs of the second class.§ We would thus make three classes instead of two, following in this respect the arrangement in both Madras and Bombay, and distributing the aggregate number comprehended in the second and third classes in the proportions assigned to the first and second classes under the present system. Upon this plan, the total charge for the pay of moonsiffs would be 46,950 rupees per mensem, exceeding the present charge by 11,290 rupees. Including the usual allowance for establishments, the excess would amount to 14,050 rupees.‖ On the other hand, there would be a saving, by dispensing with the

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* Madras, average per annum - - - - - 250
Bengal, average - - - - - - - 255
Bombay, average - - - - - - - 411

The great excess in the number of suits decided by the moonsiffs of Bombay arises partly, we apprehend, from cases being heard as regular suits in that Presidency (cl. 1. sec. 66, cl. 1. sec. 67. Reg. IV. of 1827), which in Bengal and Madras are entered in the statements as miscellaneous cases.

† Establishment, as per Report of Sudder Adawlut, dated 14 January 1841 - - 100
Add - - - - - - - - - - - - - - - - 27
127

‡ Number of persons charged before the Magistrate, &c. in one year, 1839-40 - 7,992
7,992 ÷ 127 = 63 nearly.

§ 1st class - - - - 38 × 200 = 7,600
2d class - - - - 87 × 150 = 13,050
3d class - - - - 263 × 100 = 26,300
388 46,950

‖ Proposed charges - - - - - - - - - - - 46,950
Present charges, Lower Provinces - - - - - - - 24,900
Upper ditto - - - - - - - - 10,760
35,660
11,290
Establishments, 69 × 40 - - - - - - - - - - - 2,760
14,050

		Pay.	Establishment.	Total.
Lower Provinces:				
Number of Sudder Ameens - - -	28	250	80	9,240
Upper Provinces:				
Number of Sudder Ameens - - -	9	250	80	2,970
				12,210
Extra charge incident to the plan proposed - - - - - - -				1,840
				14,050

the Sudder Ameens and their establishments, as above proposed, to the amount of 12,210 rupees.

53. The salary proposed for the first class of moonsiffs is that which is enjoyed by moonsiffs of the same rank in the Presidency of Bombay. The salaries proposed for the second and third classes, correspond with those of the first and second classes at present.

54. In 1838, the number of moonsiffs on the Madras establishment being 98, was divided as noted in the margin.* The present number appears to be 100; to which we propose to add 26, making a total of 126. We would continue the distribution of the moonsiffs into three classes; but in the proportions and with the rates of salary proposed for Bengal. This would give 12 to the first class, 28 to the second, and 87 to the third, at a charge, including an average allowance of 70 rupees a month for establishments, amounting to 24,190 a month, which exceeds the present charge by 4,205 rupees, an excess which will be more than covered by the saving from dispensing with the Sudder Ameens; the result being a net decrease of charge to the amount of 4,125 rupees per mensem.

55. In Bombay the present number of moonsiffs is 68, distributed as noted in the margin, to which we propose to add 20, making 88. For the present we would leave the numbers of the first and second classes as they stand, adding 20 to the third class; but we are inclined to think that, eventually, the number of each class should be adjusted in the manner proposed for Bengal and Madras.

1st class	22
2d class	33
3d class	13
	68

56. With respect to the salaries of the moonsiffs of Bombay, the only change we would suggest is, that all of each class be paid at the same rate, and that the rates be the same as proposed for Bengal and Madras, which already obtain in the districts composing one half of the Presidency.

57. The addition of 20 moonsiffs to the third class, including establishments, will cause an increase of charge to the amount of 3,000 rupees per mensem, while on the other hand there will be a saving from dispensing with the Sudder Ameens, to the amount of 5,600, the result being a net saving of 2,600.†

58. In

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* 1st class - - - - - - - - - 44 at 140 rupees.
2d class - - - - - - - - - 45 „ 115 —
3d class - - - - - - - - - 9 „ 100 —

98
Since added, supposed to be of third class - - 2

100

Proposed:		Salary.
1st class - -	12 × 200 =	2,400
2d class - -	28 × 150 =	4,200
3d class - -	87 × 100 =	8,700
	127	15,300
Establishments -	127 × 70 =	8,890
Total proposed Salaries and Establishments -		24,190
Present ditto - - - - - -		19,985
Difference - - -		4,205

Present:		Salary.
1st class - -	44 × 140 =	6,160
2d class - -	45 × 115 =	5,175
3d class - -	11 × 100 =	1,100
	100	12,435
1st class - - -	44 × 85 =	3,740
2d class - - -	45 × 70 =	3,150
3d class - - -	11 × 60 =	660
Total present Salaries and Establishments - - - -		19,985

Number of Sudder Ameens proposed in letter from Secretary to Government, Fort St. George, dated 24 September 1842 - - - - - - - - 34
Salary of Sudder Ameen, Rs. 200
Establishment - - 45

245 × 34 = 8,330 Total charge for Sudder Ameens to be saved.
Deduct increase of charge for Moonsiff, 4,205

4,125 Net Saving.

† 20 Moonsiffs, at 100 Rs. each = 2,000
Establishment, at 50 - „ = 1,000
3,000

14 Sudder Ameens, at 350 Rs. each = 4,900
Establishment, at 50 - „ = 700
5,600
3,000
2,600

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58. In Bengal the principle of gradation has been applied to the Principal Sudder Ameens as well as the moonsiffs. We recommend that it be applied likewise to the Principal Sudder Ameens in the Presidencies of Madras and Bombay, by dividing them into two classes, in the proportion of one-fourth to the first class, and three-fourths to the second in Madras, and one-third to the first, and two-thirds to the second in Bombay, fixing the salary of the first class at 600 rupees, and of the second at 400 rupees, as in Bengal. The result would be a charge somewhat less than if each had a salary of 500 rupees, as at present.

The whole number being six, this seems to be the best distribution.

59. By the principle of gradation, beginning with an allowance sufficient to afford a decent competency, and ending with a remuneration high enough to be considered as a prize, we think that the judicial service is likely to be much improved in these ranks. The hope of advancement in the service will operate on every member of it, from his first admission as a moonsiff of the lowest grade, and will continue to influence him as a motive to diligence and faithfulness in the discharge of his duty, until he attains the highest step, arrived at which the actual advantage of his situation will be a security for his integrity. With the hope of advancement by steps, each of which will considerably better his condition, the allowance of 100 rupees, which is proposed to be given to a moonsiff of the third class, may be sufficient to prevent him from yielding to corruption, although, without such a prospect, we apprehend it would be inadequate. The allowance, we conceive, is enough to enable the moonsiff to live comfortably and respectably, but without the hope of increase it would scarcely put him above the temptation to dishonesty to which he would be exposed. Under the arrangement proposed, every one may reasonably expect by good conduct to reach at least the first class of moonsiffs, by which his income would be doubled; and may hope by extraordinary exertion to raise himself to the first class of Principal Sudder Ameens, by which it would be increased sixfold. We think it proper to observe, however, that if the state of the public finances would admit of it, we would recommend that the whole body of the moonsiffs in every Presidency should be divided into two classes, in the proportion of one-fourth to the first class, and three-fourths to the second, allowing a salary of 200 rupees to the first class, and of 150 rupees to the second.

60. By the measures we have proposed, there would be, as we have shown, an increase in the judicial charges of Bengal, but a decrease in those of Madras and Bombay; the result on the whole being a considerable saving.*

61. With respect to Bengal, by the means we have suggested, at a very small additional charge, there would be 388 tribunals under respectable and competent judges, dispersed over the country at as many separate stations, charged with the cognizance of petty offences, which can now be inquired into only at the few Sudder stations where the magistrates are located; while the magistrates, relieved chiefly by those local tribunals from a load of petty judicial business, would be enabled to apply themselves to the improvement of the police. On the other hand, the administration of civil justice would be facilitated and expedited by the establishment of so many as 69 new local courts, with the extended jurisdiction which is proposed to be given to the moonsiffs generally.

62. It is to be observed, that so far as the administration of civil justice only is affected by our plan, the judicial charges of Bengal, equally with those of Madras

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* Increase:—Bengal - Rs. 1,840 per mensem.

Decrease:—Madras - Rs. 4,125 per mensem.
Bombay - 2,600
6,725
1,840
Net Decrease - - 4,885 per mensem.
12
Rs. 58,620 per annum.

Madras and Bombay, would be diminished by it.* The provisions we propose for criminal judicature are those that involve an increase; provisions which we conceive to be most urgently needed, and which, it cannot but be concluded, would be cheaply purchased at an additional cost far greater than appears to be necessary by our scheme.

63. It should be remarked, that the calculations we have given above are intended to exhibit approximately the ultimate financial result of the measures we contemplate, not what may be expected immediately. We would advise that those measures should be carried into effect at once; but we think that in carrying them into effect, care should be taken to save existing interests. For example, in abolishing the class of Sudder Ameens, we would continue to the officers of this class who should be appointed moonsiffs, the allowances they at present enjoy. On the other hand, we would stop promotion among the moonsiffs, until by lapses among those transferred from the list of Sudder Ameens, the excess of charge arising from the superior allowances continued to them should be got rid of.

64. In the calculations we have given above, we have made an allowance of 40 rupees a month for the establishment of each moonsiff in the Presidency of Bengal, such being the fixed rate of allowance at present. But it appears to us that this allowance can hardly be sufficient. The rate in the Presidency of Bombay is 50 rupees. In the Presidency of Madras it varies from 85 rupees to 60 rupees. For Madras,† we have assumed for the future an average rate of 70 rupees; we would suggest that in Bengal the allowance be raised at least to the rate which obtains in Bombay.

The allowance for a Principal Sudder Ameen is 150 Rs. For a Sudder Ameen, 80 Rs.

† Para. 54, *supra*.

65. Should the appellate jurisdiction of the Principal Sudder Ameens of Bombay be extended as we propose, and should they also be invested with criminal jurisdiction to the extent we recommend, it appears to us that the assistant judges attached to some of the zillah courts may be dispensed with. There are three zillahs: Surat, Tannah and Ahmednuggur, each comprising two collectorates, and each having, besides the zillah courts at the Sudder station, a subordinate court under an assistant judge in the annexed collectorate. In each of these zillahs, as the Principal Sudder Ameen at the Sudder station will, by the proposed scheme, have power to perform all the functions, civil and criminal, now ordinarily performed by the assistant judge attached to the zillah court, and being entirely relieved from the adjudication of original civil suits not exceeding 5,000 rupees, will have time to perform them; it would seem that there can be no necessity for continuing that officer. By discontinuing the assistant judges at the Sudder stations in these three zillahs, there will be a saving of 2,100 rupees per mensem, or 25,200 rupees per annum, and something more on account of establishments.

Except the hearing of appeals from moonsiffs in suits above 1,000 rupees, of which, at the stations mentioned, the number decided in 1838 was only 27.

66. In

	Lower Provinces.	Upper Provinces.
* Present Establishment of Moonsiffs - - -	222	97
Add for civil business - - -	20	4
	242	101
	101	
	343	

1st class - - - - -	34	×	200	= 6,800
2d class - - - - -	77	×	150	= 11,550
3d class - - - - -	232	×	100	= 23,200
	343			41,550
Add Establishments for new Moonsiffs -	24	×	40	= 960
				42,510
Present charge - - - - - - -				35,660
Increase - - -				6,850
Saving by Sudder Ameens - - - - -				12,210
Net saving - -				5,360

No. 3.
On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

66. In pursuance of the suggestion in paragraph 139 of our Report to the Governor-general, we would recommend that the assistant judges holding detached courts be vested with original jurisdiction in all cases arising within the collectorates in which they are stationed respectively, for an amount beyond the jurisdiction of the moonsiffs (5,000 rupees).

67. An objection may, perhaps, be raised to dispensing with the assistant judges at the Sudder stations of zillahs, on account of the miscellaneous business now done by them, of which the principal part, we understand, is making translations in appeals to the Sudder Court, and in criminal trials referred to that court by the judges of sessions. We think, however, that it would be an improvement to send up the record as it stands in every case, civil and criminal, leaving it to the judge or judges of the superior court before whom the case is brought to direct translations to be made, if required, by a translator attached to the court. We apprehend, that in many cases translations would not be required at all, and that in many more, translations of particular parts of the records only would be required; so that probably the work would be greatly diminished, while it would no doubt be as well done by persons permanently attached to the superior court, and constantly employed in that business, whose services might be obtained for a moderate remuneration. The saving above stated must be considered as subject to some reduction on this account. An arrangement of this nature is about to be made in the Madras Presidency.

68. In conclusion, it may be convenient to recapitulate the measures we have now the honour to recommend, which are as follows:

Principal Sudder Ameens' civil jurisdiction.

The Principal Sudder Ameens of Bengal and Bombay, like those of Madras, to take cognizance of all civil suits liable to their jurisdiction, of their own authority.

The civil jurisdiction of Principal Sudder Ameens in Madras, to be free from any pecuniary limitation, as in Bengal and Bombay.

In Bombay, as in Bengal and Madras, Principal Sudder Ameens to be empowered to hear and determine appeals from the decrees of moonsiffs, in suits to the amount of 1,000 rupees, on reference from the zillah judge.

In Bengal, the zillah judge to be empowered to refer appeals to Principal Sudder Ameens, without special authority from the Sudder Courts.

Principal Sudder Ameens' criminal jurisdiction.

In Bengal and Bombay, as in Madras, Principal Sudder Ameens to be vested with criminal jurisdiction.

In Madras and Bombay, as in Bengal, Principal Sudder Ameens to be divided into two classes; the salary of the first class to be 600 rupees, and of the second 400 rupees per mensem.

Sudder Ameens.

The class of Sudder Ameens in all the Presidencies to be abolished, and moonsiffs substituted for them.

Moonsiffs.

The jurisdiction of moonsiffs in Bengal to be extended to 1,000 rupees, as in Madras.

All suits cognizable by moonsiffs to be instituted in their courts in Madras and Bombay, as in Bengal.

Zillah judges in all the Presidencies to have power, for special cause, to call up particular suits instituted before Principal Sudder Ameens or moonsiffs, and to try them themselves, or to order them to be tried by other courts of equal or superior rank.

Moonsiffs in Bengal and Madras to be vested with criminal jurisdiction.

At Bombay, the assistant judges at Surat, Tannah and Ahmednuggur, to be dispensed with.

Minute by Mr. Borradaile.

69. Mr. Borradaile, entertaining some objections to the entire abolition of the class of Sudder Ameens in the Bombay Presidency, has recorded his sentiments in a separate minute, which we herewith submit.

70. It is to be observed, that the plan recommended in this report simply provides that, for every collectorate (except Sholapore, which has been lately formed into

into a zillah by itself) there shall be, under the civil and session judge, either an assistant judge or a Principal Sudder Ameen, vested with powers and functions nearly corresponding, the only difference being that the appellate jurisdiction of Principal Sudder Ameens in civil cases is to be restricted to suits decided by moonsiffs in which the amount at issue does not exceed 1,000 rupees, while that of the assistant judges will embrace all suits decided by moonsiffs; and that in the criminal department, the jurisdiction of the assistant judges, which ordinarily will be the same as that of the Principal Sudder Ameens, may be extended specially at the discretion of Government, so as to embrace cases punishable with imprisonment for seven years.

71. It does not appear to the majority of the Commissioners, that from this difference in the jurisdiction of the assistant judges and Principal Sudder Ameens, the business of the former is likely to exceed that of the latter in such a degree as to render it expedient to afford to each of the detached assistant judges the aid of a Sudder Ameen or a Principal Sudder Ameen of the second class, and they do not think that there is any other sufficient reason for doing so. It is remarked, that, in the late arrangement for Sholapore, it has not been thought necessary to give this aid to the judge of the new zillah, who is to exercise the jurisdiction of both a civil and session judge, and of an assistant judge.

We submit this our Report for the consideration of your honour in Council.

(signd) *C. H. Cameron.*
F. Millett.
D. Elliot.
H. Borradaile.

Indian Law Commission, 17 May 1843.

STATEMENT, showing the Value of ORIGINAL SUITS decided by the JUDICIAL FUNCTIONARIES under the BOMBAY PRESIDENCY in 1838.

		PRINCIPAL SUDDER AMEEN'S JURISDICTION, UNLIMITED. / SUDDER AMEEN'S JURISDICTION, UP TO 10,000 RUPEES. / MOONSIFF'S JURISDICTION, UP TO 5,000 RUPEES.																								
Under - - - - Rupees		10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	6,000	7,000	8,000	9,000	10,000	Upwards of 10,000.	TOTAL.
Original Suits decided on the Merits—																										
Agent - -	Poonah - - -	–	–	–	–	–	–	–	–	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	1	2
Assistant Judge	Surat - - -	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	1
	Tannah - -	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
Assistant Agent -	Poonah - - -	1	2	4	1	3	12	2	2	4	–	1	–	3	2	6	–	5	1	2	–	–	–	–	–	–	51
Assistant Judge	Sholapoor - - -	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
	Dharwar - -	1	1	–	1	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	5
	TOTAL - - -	3	4	4	2	3	14	2	2	5	1	2	–	3	2	6	–	5	1	2	–	–	–	–	–	1	62
Principal Sudder Ameens -	Ahmedabad - -	189	150	85	38	29	46	8	4	10	–	1	1	3	2	4	–	3	–	–	2	1	–	1	1	4	582
	Surat - - -	1	3	21	16	9	69	16	10	14	2	2	5	2	5	6	5	3	1	2	3	–	–	–	–	6	201
	Tannah - - -	86	71	50	54	41	65	20	5	12	1	1	1	–	–	9	–	1	2	–	–	–	–	–	–	1	420
	Poonah - - -	258	135	60	25	14	29	5	3	8	1	–	–	2	2	3	–	–	1	4	1	–	–	–	1	4	556
	Nuggur - - -	282	215	83	35	16	29	3	5	8	1	2	–	1	2	1	–	–	–	–	1	–	–	1	–	3	688
	Dharwar - - -	90	85	42	19	7	11	6	5	–	1	1	–	–	1	–	1	–	–	–	–	–	–	–	–	1	270
P. S. Ameens (6) - -	TOTAL - - -	906	659	341	187	116	249	58	32	52	6	7	7	8	12	23	6	7	4	6	7	1	–	2	2	19	2,717
	Ahmedabad City - -	206	169	118	40	17	42	9	3	7	1	1	2	2	4	5	1	3	–	1	1	–	–	–	1	–	633
	——— Dholka -	47	67	35	12	11	10	3	1	4	–	1	1	–	–	1	–	1	–	1	1	–	–	–	–	–	196
	——— Kaira -	319	300	212	81	31	54	7	3	6	–	1	1	–	2	4	–	1	–	1	–	–	–	–	–	–	1,023
Sudder Ameens	Surat City - - -	11	53	88	52	46	76	10	3	14	–	1	2	2	2	2	1	1	1	–	–	–	–	–	–	–	365
	Broach - - -	382	215	130	53	21	41	8	2	4	2	–	–	–	1	1	–	1	–	1	–	–	1	–	–	–	863
	Rutnagiree - - -	141	63	35	13	11	10	4	–	4	–	–	1	–	–	–	–	2	–	–	–	–	–	–	–	–	284

Sudder Ameens	Poonah, 1st	302	163	60	19	18	23	9	1	3	–	–	2	1	3	1	2	1	–	–	–	–	–	–	1	–	610
	Indapoor, 2d	172	91	25	4	2	6	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	302
	Sholapoor	287	178	80	20	11	21	6	1	7	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	612
	Ahmednuggur, Kurda	310	249	60	13	3	14	1	1	1	2	1	1	1	–	–	–	1	–	–	–	–	–	–	–	658
	——— Nassick	327	217	90	15	15	16	3	1	3	2	1	1	–	1	3	–	–	–	–	–	–	–	–	–	695
	Kandeish, Maligaum	122	97	42	12	9	11	5	4	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	303
	Dharwar, Belgaum	238	190	87	32	14	24	6	1	6	–	1	–	–	–	2	–	–	1	–	1	–	–	–	–	–	603
	——— Hoobly	110	115	85	24	16	24	8	4	2	2	1	–	–	–	1	–	–	–	–	–	–	–	–	–	–	392
Sudder Ameens (14) - - Total		2,974	2,167	1,147	390	225	372	80	25	62	9	8	11	6	13	21	4	11	3	5	3	–	1	–	–	–	7,539
Work of Inferior Grades done by Superior Grades		3,883	2,830	1,492	579	344	635	140	59	119	17	18	18	17	27	50	10	23	8	13	10	1	1	2	4	20	10,318
Moonsiffs	Ahmedabad & Kaira (12)	887	1,038	784	278	161	294	71	16	34	4	9	10	6	7	20	1	17	2	6	–	–	–	–	–	–	3,645
	Surat (6)	356	455	337	107	60	91	27	5	27	5	3	3	3	10	12	2	4	1	1	–	–	–	–	–	–	1,509
	Broach (7)	1,283	993	624	235	106	190	29	18	29	2	1	9	2	13	11	2	1	–	1	–	–	–	–	–	–	3,549
	Tannah (9)	1,485	999	620	114	77	136	28	6	8	2	2	–	3	5	2	–	5	–	–	–	–	–	–	–	–	3,492
	Rutnagiree (5)	573	308	153	43	32	57	5	5	11	1	–	–	–	7	3	–	1	–	–	*	–	–	–	–	–	1,199
	Poonah (6)	1,832	1,212	453	123	71	129	36	10	17	3	1	6	5	4	13	2	1	3	–	–	–	–	–	–	–	3,931
	Sholapoor (4)	865	539	218	53	39	64	16	4	4	2	–	1	–	4	2	–	1	–	1	–	–	–	–	–	–	1,813
	Nuggur (10)	2,284	1,546	557	188	80	114	38	8	10	3	3	5	–	3	5	1	–	–	–	–	–	–	–	–	–	4,845
	Dhoolia (5)	582	499	182	74	39	60	18	8	8	1	1	1	1	–	1	2	–	–	1	–	–	–	–	–	–	1,478
	Dharwar (6)	377	404	227	79	51	82	15	4	15	1	1	–	–	8	2	–	–	–	2	–	–	–	–	–	–	1,268
Total Moonsiffs		10,524	7,993	4,165	1,294	716	1,217	283	84	163	24	21	35	20	61	71	10	30	6	12	–	–	–	–	–	–	26,729
Grand Total		14,407	10,823	5,657	1,873	1,060	1,852	423	143	282	41	39	53	37	88	121	20	53	14	25	10	1	1	2	4	20	37,047

Stamp for Plaint - - - Rs.		Rs. as. – 8	Rs. 2	Rs. 4	Rs. 5	Rs. 7	Rs. 10	Rs. 20	Rs. 30	Rs. 30	50	50	50	50	50	70	100	100	150	150						
Proportion	Proportion	391	292	152	·050	·028	·049	·011	·003	·007	only $\frac{17}{1000}$ above 500 rupees.															
	Per Centage	68 per cent.		23 per cent.			6 per cent. = Ninety seven per cent. under 300 rupees.																			
		91 per cent. under 100 rupees.																								

(continued.)

* *N.B.*—The details of the Moonsiff's book are given in the Analysis.

STATEMENT, showing the Value of Original Suits decided by the Judicial Functionaries under the Bombay Presidency in 1838—*continued.*

	PRINCIPAL SUDDER AMEEN'S JURISDICTION, UNLIMITED.																								
	SUDDER AMEEN'S JURISDICTION, UP TO 10,000 RUPEES.																								
	MOONSIFF'S JURISDICTION, UP TO 5,000 RUPEES																								
Under - - - - - Rupees	10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	6,000	7,000	8,000	9,000	10,000	Upwards of 10,000.	TOTAL.
Original Suits otherwise disposed of—																										
Judge - Dharwar - - -	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Assistant Judge — Ahmedabad - -	–	–	–	1	1	2	1	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	7
Assistant Judge — Surat - - - -	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Assistant Judge — Poonah (Agent) - -	–	1	1	1	1	2	–	1	1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	9
Assistant Judge — Sholapoor - - -	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	1
Assistant Judge — Dhoolia - - -	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	1
Assistant Judge — Dharwar - - -	–	–	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
European Functionaries - - TOTAL - -	–	1	3	2	2	5	1	1	1	–	–	–	–	2	2	–	–	–	–	–	–	–	–	–	1	22
Principal Sudder Ameens - - Ahmedabad - -	370	94	50	17	8	16	3	–	2	–	–	1	–	3	2	–	–	–	–	–	–	–	–	2	1	569
Principal Sudder Ameens - - Surat - - - -	–	2	14	6	5	18	4	4	4	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	58
Principal Sudder Ameens - - Tannah - - -	48	20	10	9	2	16	2	–	1	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	109
Principal Sudder Ameens - - Poonah - - -	179	26	9	2	7	2	–	–	–	–	–	–	–	1	1	–	–	–	–	–	–	–	–	–	1	228
Principal Sudder Ameens - - Nuggur - - -	140	62	19	5	3	10	1	1	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	244
Principal Sudder Ameens - - Dharwar - - -	63	55	23	7	2	6	2	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	1	160
P. S. Ameens (6) - - TOTAL - - -	800	259	125	46	27	68	12	5	9	–	–	1	–	6	4	–	–	–	–	–	–	–	–	2	4	1,368

Sudder Ameens	Ahmedabad City	495	136	49	13	5	18	3	2	3	–	–	1	1	–	1	–	–	–	–	–	–	–	–	–	–	691
	Dholka	276	119	35	13	2	10	4	1	2	–	–	–	–	1	2	–	–	–	–	–	–	–	–	–	–	465
	Kaira	193	95	39	6	3	10	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	348
	Surat City	16	27	39	17	13	8	3	–	2	1	2	–	–	–	1	1	–	–	–	–	–	–	–	–	–	130
	Broach	355	87	40	2	9	7	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	501
	Rutnagiree	188	24	14	7	6	3	1	–	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	245
	Poonah, 1st	151	39	19	5	7	7	1	1	1	–	–	1	–	–	1	1	1	–	1	–	–	–	–	–	–	236
	2nd	194	82	19	4	1	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	303
	Sholapoor	75	47	15	6	4	10	2	–	2	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	162
	Ahmednuggur, Kurda	252	125	18	5	7	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	410
	Nassick	319	181	28	7	5	4	3	2	1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	551
	Khandeish, Maligaum	74	51	16	6	3	1	–	–	1	–	1	–	–	–	1	–	–	–	–	–	–	–	–	–	–	154
	Dharwar, Belgaum	90	49	18	6	5	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	169
	Hoobly	55	32	13	1	3	5	2	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	112
Sudder Ameens (14)	TOTAL	2,697	1,094	362	98	73	89	22	6	14	1	3	3	1	1	8	2	1	–	1	1	–	–	–	–	–	4,477
Work of Inferior Grade done by Superior Grades		3,497	1,354	490	146	102	162	35	12	24	1	3	4	1	9	14	2	1	–	1	1	–	–	–	2	5	5,867
Moonsiffs	Ahmedabad & Kaira (12)	2,406	1,144	576	130	81	126	31	5	19	1	1	3	3	10	4	5	5	1	1	–	–	–	–	–	–	4,552
	Surat (6)	630	367	197	46	21	34	4	2	5	–	–	2	1	1	1	–	–	–	–	–	–	–	–	–	–	1,311
	Broach (7)	1,440	430	244	75	27	40	5	4	3	–	–	1	–	1	–	–	–	–	–	–	–	–	–	–	–	2,270
	Tannah (9)	1,307	488	161	50	22	36	3	3	4	–	–	1	2	–	1	–	3	–	2	–	–	–	–	–	–	2,083
	Rutnagiree (5)	709	231	83	18	11	17	2	2	2	–	–	–	1	–	–	–	1	–	–	–	–	–	–	–	–	1,077
	Poonah (6)	1,374	665	137	31	27	31	11	1	6	–	1	–	–	4	–	–	–	–	–	–	–	–	–	–	–	2,288
	Sholapoor (4)	634	243	80	25	9	13	4	1	1	1	–	1	–	1	–	–	–	–	–	–	–	–	–	–	–	1,013
	Nuggur (10)	1,607	772	213	45	24	35	3	1	3	–	–	–	1	3	2	–	–	–	–	–	–	–	–	–	–	2,709
	Dhoolia (5)	623	379	101	48	23	23	5	2	2	–	–	–	2	2	–	–	–	–	3	–	–	–	–	–	–	1,213
	Dharwar (6)	236	114	55	17	5	22	2	–	4	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	457
Moonsiffs (70)		10,966	4,833	1,847	485	250	377	70	21	49	2	3	8	10	22	8	5	10	1	6	–	–	–	–	–	–	18,973
GRAND TOTAL		14,463	6,187	2,337	631	352	539	105	33	73	3	6	12	11	31	22	7	11	1	7	1	–	–	–	2	5	24,839

(continued.)

STATEMENT showing the Value of Original Suits decided by the Judicial Functionaries under the Bombay Presidency in 1838—*continued*.

	PRINCIPAL SUDDER AMEEN'S JURISDICTION, UNLIMITED.																								
	SUDDER AMEEN'S JURISDICTION, UP TO 10,000 RUPEES.																								
	MOONSIFF'S JURISDICTION, UP TO 5000RUPEES.																							Upwards of 10,000.	TOTAL.
Under - - - - - Rupees	10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	6,000	7,000	8,000	9,000	10,000	
Original Suits decided on Merits, or otherwise disposed of—																									
Poonah and Dharwar Agents - - -	–	–	–	–	–	–	1	–	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	3
Assistant Judge — Ahmedabad - - -	–	–	–	1	1	2	1	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	7
Assistant Judge — Surat - - - -	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	2
Assistant Judge — Tannah - - -	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
Assistant Judge — Poonah, Assistant Agent -	1	3	5	2	4	14	2	3	5	–	1	–	3	2	7	–	5	1	2	–	–	–	–	–	60
Assistant Judge — Sholapoor - - -	–	–	–	–	–	–	–	–	1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	2
Assistant Judge — Dhoolia - - -	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	1
Assistant Judge — Dharwar - - -	1	1	1	1	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	7
English Agency - - TOTAL - - -	3	5	7	4	5	19	4	3	6	1	2	–	3	4	8	–	5	1	2	–	–	–	–	–	2	84
Principal Sudder Ameens. — Ahmedabad - - -	559	244	135	55	37	62	11	4	12	–	1	2	3	5	6	–	3	–	–	2	1	–	1	3	5	1,151
Principal Sudder Ameens. — Surat - - -	1	5	35	22	14	87	20	14	18	2	2	5	2	5	7	5	3	1	2	3	–	–	–	–	6	259
Principal Sudder Ameens. — Tannah - - -	134	91	60	63	43	81	22	5	13	1	1	1	–	1	9	–	1	2	–	–	–	–	–	–	1	529
Principal Sudder Ameens. — Poonah - - -	437	161	69	27	21	31	5	3	8	1	–	–	2	3	4	–	–	1	4	1	–	–	–	1	5	784
Principal Sudder Ameens. — Nuggur - - -	422	277	102	40	19	39	4	6	10	1	2	–	1	2	1	–	–	–	–	1	–	–	1	–	4	932
Principal Sudder Ameens. — Dharwar - - -	153	140	65	26	9	17	8	5	–	1	1	–	–	2	–	1	–	–	–	–	–	–	–	–	2	430
P. S. Ameens (6) - - TOTAL - - -	1,706	918	466	233	143	317	70	37	61	6	7	8	8	18	27	6	7	4	6	7	1	–	2	4	23	4,085
Ahmedabad City - -	665	305	167	53	22	60	12	5	10	1	1	3	3	4	6	1	3	–	1	1	–	–	–	1	–	1,324
——— Dholka -	323	186	70	25	13	20	7	2	6	–	1	1	–	1	3	–	1	–	1	1	–	–	–	–	–	661
——— Kaira - -	512	395	251	87	34	64	9	3	6	–	1	1	–	2	4	–	1	–	1	–	–	–	–	–	–	1,371
Surat City - - -	27	80	127	69	59	87	13	13	16	1	3	2	2	2	3	2	1	1	–	–	–	–	–	–	–	495
—— Broach - -	737	302	170	55	30	48	9	2	4	2	–	–	–	1	1	–	1	–	1	–	–	1	–	–	–	1,364

Sudder Ameens	Rutnagiree	329	87	49	20	17	13	5	–	5	–	–	2	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	529
	Poonah, 1st	453	202	79	24	25	30	10	2	4	–	–	3	1	3	2	3	2	–	2	–	–	–	–	1	–	–	–	846
	—— 2d	366	173	44	8	3	9	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	605
	Sholapoor	362	225	95	26	15	31	8	1	9	–	–	–	–	–	–	–	–	1	–	1	–	–	–	–	–	–	–	774
	Ahmednuggur, Kurda	562	374	78	18	10	17	1	1	1	2	1	1	1	–	–	–	1	–	–	–	–	–	–	–	–	–	–	1,068
	—— Nassick	646	398	118	22	20	20	6	3	4	2	1	1	–	1	4	–	–	–	–	–	–	–	–	–	–	–	–	1,246
	Khandeish, Dhoolia	196	148	58	18	12	12	5	4	1	–	1	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	457
	Dharwar, Belgaum	328	239	105	38	19	24	6	1	6	–	1	–	–	–	3	–	–	1	–	1	–	–	–	–	–	–	–	772
	—— Hoobly	165	147	98	25	19	29	10	4	3	2	1	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	504
	(14)	5,671	3,261	1,509	488	298	461	102	31	76	10	11	14	7	14	29	6	12	3	6	4	–	1	–	2	–	–	–	12,016
Work of Inferior Grade done by Superior Grades		7,380	4,184	1,982	725	446	797	176	71	143	17	20	22	18	36	64	12	24	8	14	11	1	1	2	6	25	–	–	16,185
Moonsiffs	Ahmedabad & Kaira (12)	3,293	2,182	1,360	408	242	420	102	21	53	5	10	13	9	17	24	6	22	3	7	–	–	–	–	–	–	–	–	8,197
	Surat (6)	986	822	534	153	81	125	31	7	32	5	3	5	4	11	13	2	4	1	1	–	–	–	–	–	–	–	–	2,820
	Broach (7)	2,723	1,423	868	310	133	230	34	22	32	2	1	10	2	14	11	2	1	–	1	–	–	–	–	–	–	–	–	5,819
	Tannah (9)	2,792	1,487	781	164	99	172	31	9	12	2	2	1	5	5	3	–	8	–	2	–	–	–	–	–	–	–	–	5,575
	Rutnagiree (5)	1,282	539	236	61	43	74	7	7	13	1	–	–	1	7	3	–	2	–	–	–	–	–	–	–	–	–	–	2,276
	Poonah (6)	3,206	1,877	600	154	98	160	47	11	23	3	2	6	5	8	13	2	1	3	–	–	–	–	–	–	–	–	–	6,219
	Sholapoor (4)	1,499	782	298	78	48	77	20	5	5	3	–	2	–	5	2	–	1	–	1	–	–	–	–	–	–	–	–	2,826
	Nuggur (10)	3,891	2,318	770	233	104	149	41	9	13	3	3	5	1	6	7	1	–	–	–	–	–	–	–	–	–	–	–	7,554
	Khandeish (5)	1,205	878	283	122	62	83	23	10	10	1	1	1	3	2	1	2	–	–	4	–	–	–	–	–	–	–	–	2,691
	Dharwar (6)	613	518	282	96	56	104	17	4	19	1	2	–	–	8	2	–	1	–	2	–	–	–	–	–	–	–	–	1,725
Moonsiffs (70)	TOTAL	21,490	12,826	6,012	1,779	966	1,594	353	150	212	26	24	43	30	83	79	15	40	7	18	–	–	–	–	–	–	–	–	45,702
	GRAND TOTAL	28,870	17,010	7,994	2,504	1,412	2,391	529	176	355	43	44	65	48	119	143	27	64	15	32	11	1	1	2	6	25	–	–	61,887
Stamp for Plaint		*Rs. as.* 0 8	*Rs. as.* 2 0	*Rs. as.* 4 0	*Rs. as.* 5 0	*Rs. as.* 7 0	*Rs.* 10	*Rs.* 20	30	30	50	50	50	50	50	70	100	100	150	150									
Proportion		·446	·274	·129	·040	·022	·038	·0085	·0028	·0057																			
Per Centage		74 per cent.		19 per cent.			46 per cent.		85, p' cent.																				

Per cent. 97 75 under 300 rupees; 98·60 under 500; only 1·43 per cent, above 500 rupees.

(continued.)

STATEMENT, showing the Value of Original Suits decided by the Judicial Functionaries under the Bombay Presidency in 1838—*continued.*

	PRINCIPAL SUDDER AMEEN'S JURISDICTION, UNLIMITED.																								
	SUDDER AMEEN'S JURISDICTION, UP TO 10,000 RUPEES.																								
	MOONSIFF'S JURISDICTION, UP TO 5000RUPEES.																								
Under - - - - - Rupees	10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	6,000	7,000	8,000	9,000	10,000	Upwards of 10,000.	TOTAL.
Appeals decided by—																										
Judge - - Ahmedabad - -	20	38	45	9	8	24	8	1	7	1	–	3	1	–	4	2	–	–	1	–	–	–	–	–	–	172
Surat - - - -	7	13	31	6	8	50	13	6	21	1	3	3	2	3	9	–	3	1	4	2	–	–	–	–	–	199
Tannah - - -	2	6	7	2	–	5	1	–	2	–	–	1	–	–	–	–	–	1	–	–	–	–	–	3	10	27
Poonah - - -	19	35	31	16	18	20	8	5	8	1	3	3	1	10	6	–	–	–	–	–	–	–	1	3	–	188
Ditto, Agent - -	1	3	3	1	–	4	–	1	–	–	1	–	–	1	4	–	–	1	–	–	–	–	–	–	–	20
Ahmednuggur - -	13	25	29	14	6	10	5	3	2	–	–	–	1	1	–	–	–	–	–	–	–	–	–	–	–	109
Ditto, Dhoolia - -	1	2	2	1	4	9	–	–	–	–	–	–	1	–	1	–	1	–	–	–	–	–	–	–	–	22
Dharwar - - -	33	55	58	24	31	43	14	5	9	3	1	2	3	7	3	–	2	1	–	2	–	–	–	–	–	296
On the Merits - - TOTAL - - -	96	177	206	73	75	165	49	21	49	6	8	12	9	22	27	2	6	4	5	4	–	–	1	6	10	1,034
Assistant Judge Ahmedabad - -	10	18	13	7	6	9	8	1	4	–	–	1	1	–	–	1	1	–	–	–	–	–	–	–	–	80
Surat - - - -	17	26	29	19	14	47	14	6	12	–	4	3	4	6	6	3	4	2	3	–	–	–	–	–	–	219
Broach - - -	22	31	33	18	8	11	4	2	6	–	–	–	–	4	–	1	–	–	–	–	–	–	–	–	–	140
Tannah - - -	15	27	24	11	9	18	4	1	4	4	–	–	–	1	1	–	2	1	–	–	–	–	–	–	–	–	122
Rutnagiree - - -	16	8	8	4	1	5	2	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	46
Poonah, Assistant Judge	32	58	47	18	7	24	5	4	7	–	–	2	1	1	3	2	–	2	–	–	–	–	–	–	–	213
Sholapoor - - -	27	36	12	9	7	7	1	–	–	–	–	–	–	–	2	–	1	–	–	–	–	–	–	–	–	102
Nuggur - - -	34	53	43	20	12	16	9	1	4	1	–	–	1	1	5	–	–	–	–	–	–	–	–	–	–	200
Dhoolia - - -	9	18	17	10	10	9	3	1	1	–	1	–	–	–	1	–	–	–	1	–	–	–	–	–	–	81
Dharwar - - -	2	3	4	4	2	3	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	19
P. S. Ameen, Surat - - - -	15	22	26	10	8	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	81
On the Merits - - TOTAL - - -	199	300	256	130	84	149	50	16	41	5	5	6	7	13	18	7	8	5	4	–	–	–	–	–	–	1,303
Judge - - Ahmedabad - -	–	1	3	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	6
Surat - - - -	2	–	3	1	–	1	1	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	9
Tannah - - -	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
Poonah, Judge - -	3	5	4	2	–	–	1	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	18
Nuggur Nuggur - -	1	4	3	1	2	1	–	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	15
Nuggur Dhoolia -	–	1	–	2	–	–	–	–	1	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–	–	5
Dharwar - - -	3	6	2	3	3	5	–	1	2	–	1	–	–	–	–	–	–	–	1	–	–	–	–	1	–	27
Otherwise - - TOTAL - - -	9	17	16	9	5	7	3	2	7	–	1	1	–	–	–	–	–	–	3	–	–	–	–	1	–	81

Assistant Judges	Ahmedabad	2	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	3
	Surat	–	3	1	–	–	3	–	–	2	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	10
	Broach	–	–	3	–	2	–	–	1	1	–	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	8
	Tannah	–	3	2	–	1	1	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	8
	Rutnagiree	5	2	–	1	1	2	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	12
	Poonah	2	1	1	1	2	5	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	14
	Sholapoor	7	1	5	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	15
	Nuggur	–	8	3	4	1	7	2	–	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	27
	Dhoolia	4	7	3	–	1	1	1	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	19
	Dharwar	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
P. S. Ameen, Surat		1	1	1	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	5
Otherwise	TOTAL	21	26	20	7	10	20	6	1	7	1	–	–	–	–	2	–	1	–	–	–	–	–	–	–	–	–	122
Judge	Ahmedabad	20	39	48	9	8	24	9	1	7	1	–	3	1	–	4	2	–	–	2	–	–	–	–	–	–	–	178
	Surat	9	13	34	7	8	51	14	6	21	1	3	4	2	3	9	–	3	1	4	2	–	–	–	3	10	–	208
	Tannah	2	6	8	2	–	5	1	–	2	–	–	1	–	–	–	–	–	1	–	–	–	–	–	–	–	–	28
	Poonah Judge	22	40	35	18	18	20	9	6	9	1	3	3	1	10	6	–	–	–	–	–	–	–	1	4	–	–	206
	Poonah Agent	1	3	3	1	–	4	–	1	–	–	1	–	–	1	4	–	–	1	–	–	–	–	–	–	–	–	20
	Nuggur and Dhoolia	15	32	34	18	12	20	5	3	6	–	–	–	2	1	1	–	1	–	1	–	–	–	–	–	1	–	151
	Dharwar	36	61	60	27	34	48	14	6	11	3	2	2	3	7	3	–	2	1	1	2	–	–	–	–	–	–	323
TOTAL disposed of, Judges		105	194	222	82	80	172	52	23	56	6	9	13	9	22	27	2	6	4	8	4	–	–	1	7	10	1,114	
Assistant Judges	Ahmedabad	12	18	14	7	6	9	8	1	4	–	–	1	1	–	–	1	1	–	–	–	–	–	–	–	–	–	83
	Surat	17	29	30	19	14	50	14	6	14	1	4	3	4	6	6	3	4	2	3	–	–	–	–	–	–	–	229
	Broach	22	31	36	18	10	11	4	3	7	–	–	–	–	4	–	1	1	–	–	–	–	–	–	–	–	–	148
	Tannah	15	30	26	11	10	19	4	1	5	4	–	–	–	1	1	–	2	1	–	–	–	–	–	–	–	–	130
	Rutnagiree	21	10	8	5	2	7	2	–	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	58
	Poonah	34	59	48	19	9	29	7	4	7	–	–	2	1	1	3	2	–	2	–	–	–	–	–	–	–	–	227
	Sholapoor	34	37	17	10	7	8	1	–	–	–	–	–	–	–	2	–	1	–	–	–	–	–	–	–	–	–	117
	Nuggur	34	61	46	24	13	23	11	1	4	1	–	–	1	1	7	–	–	–	–	–	–	–	–	–	–	–	227
	Dhoolia	13	25	20	10	11	10	4	1	3	–	1	–	–	–	1	–	–	–	1	–	–	–	–	–	–	–	100
	Dharwar	2	3	4	4	2	3	1	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	20
P. S. Ameen, Surat		16	23	27	10	10	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	86
TOTAL disposed of, Assistant Judges		220	326	276	137	94	169	56	17	48	6	5	6	7	13	20	7	9	5	4	–	–	–	–	–	–	–	1,425
GRAND TOTAL disposed of		325	520	498	219	174	341	108	40	104	12	14	19	16	35	47	9	15	9	12	4	–	–	1	7	10	2,539	

(continued.)

STATEMENT, showing the Value of Original Suits decided by the Judicial Functionaries under the Bombay Presidency in 1838—*continued*.

		PRINCIPAL SUDDER AMEEN'S JURISDICTION, UNLIMITED. / SUDDER AMEEN'S JURISDICTION, UP TO 10,000 RUPEES. / MOONSIFF'S JURISDICTION, UP TO 5000RUPEES.																									
Under - - - - - - Rupees		10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	6,000	7,000	8,000	9,000	10,000	Upwards of 10,000.	TOTAL.
		ABSTRACT ORIGINAL SUITS DECIDED IN 1838.																									
On Merits.	Judges (6) - - -	–	–	–	–	–	–	–	–	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2
	Assistant Judges (10) - -	3	4	4	2	3	14	2	2	5	–	1	–	3	2	6	–	5	1	2	–	–	–	–	–	1	60
	Principal Sudder Ameens (6)	906	659	341	187	116	249	58	32	52	6	7	7	8	12	23	6	7	4	6	7	1	–	2	2	19	2,717
	Sudder Ameens (14) - -	2,974	2,167	1,147	390	225	372	80	25	62	9	8	11	6	13	21	4	11	3	5	3	–	1	–	2	–	7,539
	Moonsiffs (70) - - -	10,524	7,993	4,165	1,294	716	1,217	283	84	163	24	21	35	20	61	71	10	30	6	12	–	–	–	–	–	–	26,729
	TOTAL - - -	14,407	10,823	5,657	1,873	1,060	1,852	423	143	282	41	39	53	37	88	121	20	53	14	25	10	1	1	2	4	20	37,047
Otherwise	Judges - - - - -	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1
	Assistant Judges - -	–	1	3	2	2	5	1	1	1	–	–	–	–	2	2	–	–	–	–	–	–	–	–	–	1	21
	Principal Sudder Ameens -	800	259	125	46	27	68	12	5	9	–	–	1	–	6	4	–	–	–	–	–	–	–	–	2	4	1,368
	Sudder Ameens - - -	2,697	1,094	362	98	73	89	22	6	14	1	3	3	1	1	8	2	1	–	1	1	–	–	–	–	–	4,477
	Moonsiffs - - - - -	10,966	4,833	1,847	485	250	377	70	21	49	2	3	8	10	22	8	5	10	1	6	–	–	–	–	–	–	18,973
	TOTAL - - -	14,463	6,187	2,337	631	352	539	105	33	73	3	6	12	11	31	22	7	11	1	7	1	–	–	–	2	5	24,839
Total decided.	Judges - - - - -	–	–	–	–	–	–	1	–	–	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	3
	Assistant Judges - -	3	5	7	4	5	19	3	3	6	–	1	–	3	4	8	–	5	1	2	–	–	–	–	–	2	81
	Principal Sudder Ameens -	1,706	918	466	233	143	317	70	37	61	6	7	8	8	18	27	6	7	4	6	7	1	–	2	4	23	4,085
	Sudder Ameens - -	5,671	3,261	1,509	488	298	461	102	31	76	10	11	14	7	14	29	6	12	3	6	4	–	1	–	2	–	12,016
	Moonsiffs - - - - -	21,490	12,826	6,012	1,779	966	1,594	353	105	212	26	24	43	30	83	79	15	40	7	18	–	–	–	–	–	–	45,702
	TOTAL - - -	28,870	17,010	7,994	2,504	1,412	2,391	529	176	355	43	44	65	48	119	143	27	64	15	32	11	1	1	2	6	25	61,887

Proportion of Suits decided on Merits to whole Number disposed of - - - - - - - - - 596, or 60 per cent.

APPEALS DECIDED IN 1838.

Judges	96	177	206	73	75	165	49	21	49	6	8	12	9	22	27	2	6	4	5	4	–	–	1	6	10	1,033
Assistant Judges	199	300	256	130	84	149	50	16	41	5	5	6	7	13	18	7	8	5	4	–	–	–	–	–	–	1,303
ON THE MERITS, TOTAL	295	477	462	203	159	334	99	37	90	11	13	18	16	35	45	9	14	9	9	4	–	–	1	6	10	2,336
Judges	9	17	16	9	5	7	3	2	7	–	1	1	–	–	–	–	–	–	3	–	–	–	–	1	–	81
Assistant Judges	21	26	20	7	10	20	6	1	7	1	–	–	–	–	2	–	1	–	–	–	–	–	–	–	–	122
OTHERWISE, TOTAL	30	43	36	16	15	27	9	3	14	1	1	1	–	–	2	–	1	–	3	–	–	–	–	1	–	203
Judges	105	194	222	82	80	172	52	23	56	6	9	13	9	22	27	2	6	4	8	4	–	–	1	7	10	1,114
Assistant Judges	220	326	276	137	94	169	56	17	48	6	5	6	7	13	20	7	9	5	4	–	–	–	–	–	–	1,425
TOTAL DECIDED	325	520	498	219	174	341	108	40	104	12	14	19	16	35	47	9	15	9	12	4	–	–	1	7	10	2,539
Proportion of Appeals to Original Suits	·0011	·0030	·0620	·087	·123	·142	·204	·227	·292	·279	·318	·292	·333	·294	·328	·333	·234	·600	·375	·363	-	–	·500	·1	·400	·041 4 per cent.

ANALYSIS of the Work done by Moonsiffs in the Bombay Presidency.

STATEMENTS, showing the Number and Amount of the Suits Decided by each of the Moonsiffs in the Bombay Presidency in 1838.

RUPEES.

Suits decided on their Merits:	10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	Total.	
Ahmedabad City	213	158	114	49	20	40	9	2	6	2	1	3	1	2	5	–	4	–	–	629	First - Class.
Dhundhooka	60	106	93	31	17	45	8	1	7	–	3	1	1	1	–	–	2	–	1	377	First „
Nureead	122	215	143	52	39	40	10	3	5	–	2	1	–	1	1	–	3	–	1	638	First „
Dholka	248	41	32	9	5	12	8	–	3	–	–	–	–	1	1	1	1	–	–	161	Second „
Veerumgaum	49	70	52	20	18	38	9	–	2	1	2	1	1	1	4	–	2	1	1	272	Second „
Muhoondha	82	112	100	41	18	29	3	–	2	–	–	–	–	–	–	–	–	–	–	387	Second „
Kupurwunj	118	87	56	8	9	12	2	–	1	–	–	1	–	1	–	–	–	–	–	295	Second „
Nishmoodabad	76	86	63	17	10	11	5	1	4	1	–	–	–	–	1	–	–	–	–	275	Second „
Puremtej	19	14	12	6	2	3	–	1	–	–	–	–	–	–	–	–	–	–	–	57	Third „
Gogo	8	14	19	7	8	26	7	2	2	–	1	2	1	–	8	–	5	1	3	114	Third „
Oomreth	51	85	49	21	10	24	6	4	–	–	–	–	1	–	–	–	–	–	–	251	Second „
Borsud	41	50	51	17	5	14	4	2	2	–	–	1	1	1	–	–	–	–	–	189	Third „
Total (12)	887	1,038	784	278	161	294	71	16	34	4	9	10	6	7	20	1	17	2	6	3,645	
Surat City	117	130	101	35	18	17	5	–	7	2	2	1	1	2	1	–	1	–	–	440	Second Class.
Ditto	125	184	123	32	18	28	9	2	8	2	1	1	–	5	5	–	3	1	–	547	Second „
Bulsar	30	43	32	14	9	11	2	1	4	1	–	–	–	1	2	–	–	–	–	150	First „
Oothar	48	57	58	16	10	20	8	2	5	–	–	1	1	1	1	2	–	–	1	231	Second „
Soopa	10	14	10	2	3	8	1	–	1	–	–	–	1	1	2	–	–	–	–	53	Third „
Bardolee	26	27	13	8	2	7	2	–	2	–	–	–	–	–	1	–	–	–	–	88	Third „
Total (6)	356	455	337	107	60	91	27	5	27	5	3	3	3	10	12	2	4	1	1	1,509	
Broach Town	321	240	120	54	27	29	9	2	8	–	–	1	–	1	3	1	–	–	–	816	First - Class.
Ditto	261	179	139	40	25	34	3	2	1	–	–	3	1	2	3	–	–	–	–	693	Second „
Ditto	247	139	95	46	16	27	5	5	4	–	–	3	–	2	2	1	–	–	–	592	Third „
Ditto	68	32	16	10	–	2	–	1	–	–	–	–	–	–	–	–	–	–	–	129	Third „
Jumboorur	215	223	134	52	22	59	7	5	10	1	1	–	1	8	2	–	1	–	1	742	Second „
Hansot	83	95	63	15	7	20	2	–	1	1	–	1	–	–	–	–	–	–	–	288	Third „
Unklesur	88	85	57	18	9	19	3	3	5	–	–	1	–	–	1	–	–	–	–	289	First „
Total (7)	1,283	993	624	235	106	190	29	18	29	2	1	9	2	13	11	2	1	–	1	3,549	

Tannah Town	237	196	159	16	6	11	2	–	–	1	–	–	–	–	–	–	–	–	–	628	First - Class.
Ditto	68	50	16	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	154	Third „
Bassein	188	131	129	32	27	31	4	1	1	–	–	–	1	–	1	–	–	–	–	546	Second „
Caranjah	133	62	37	10	1	7	–	–	–	–	–	–	–	–	–	–	–	–	–	250	Second „
Tarapoor	25	50	36	4	8	19	4	1	1	1	1	–	–	–	–	–	1	–	–	151	Third „
Kulyan	273	163	66	8	17	28	6	–	6	–	1	–	–	–	–	–	1	–	–	569	First „
Panwel	236	134	61	15	7	11	4	–	–	–	–	–	1	2	–	–	1	–	–	474	Second „
Mhar	122	83	41	11	6	10	4	–	–	–	–	–	1	3	–	–	2	–	–	284	Second „
Pum	203	130	55	18	5	19	4	–	–	–	–	–	–	–	1	–	–	–	–	436	Third „
TOTAL (9)	1,485	999	620	114	77	136	28	6	8	2	2	–	3	5	2	–	5	–	–	3,492	
Rutnagiree Town	186	72	41	9	5	12	–	3	2	–	–	–	–	–	1	–	–	–	–	331	Third Class.
Oozradroog	92	44	28	8	6	12	–	1	2	1	–	–	–	2	1	–	–	–	–	197	First „
Unjunwel	76	35	15	2	5	8	1	–	1	–	–	–	–	1	–	–	–	–	–	144	Second „
Soovundroog	84	77	29	14	12	11	3	–	4	–	–	–	–	2	1	–	–	–	–	237	First „
Sindhoodroog	135	80	40	10	4	14	1	1	2	–	–	–	–	2	–	1	–	–	–	290	Second „
TOTAL (5)	573	308	153	43	32	57	5	5	11	1	–	–	–	7	3	1	–	–	–	1,199	
Poonah City	228	205	80	23	9	14	3	–	5	2	–	2	2	1	3	1	–	1	–	579	First - Class.
Ditto	245	189	96	30	20	45	12	2	7	–	1	2	3	2	3	1	–	1	–	659	Second „
Ditto	253	167	74	27	11	18	5	4	2	1	–	1	–	1	5	–	1	1	–	571	Second „
Joonur	445	222	85	20	17	30	10	1	1	–	–	–	–	–	–	–	–	–	–	831	First „
Tullehgaum	247	204	65	12	12	12	4	1	2	–	–	–	–	–	1	–	–	–	–	560	First „
Chakun	414	225	63	11	2	10	2	2	–	–	–	1	–	–	1	–	–	–	–	731	Second „
TOTAL (6)	1,832	1,212	463	123	71	129	36	10	17	3	1	6	5	4	13	2	1	3	–	3,931	
Sholapoor Town	246	135	71	24	11	23	6	1	1	1	–	–	–	1	–	–	1	–	1	521	Second Class.
Muhadeh	257	158	42	7	6	8	1	1	1	–	–	–	–	1	1	–	–	–	–	483	Second „
Barsee	297	177	80	17	14	29	8	–	–	1	–	1	–	2	1	–	–	–	–	627	First „
Hippurgah	65	70	25	5	8	4	1	2	2	–	–	–	–	–	–	–	–	–	–	182	Second „
TOTAL (4)	865	539	218	53	39	64	16	4	4	2	–	1	–	4	2	–	1	–	1	1,813	

(continued.)

STATEMENTS showing the Number and Amounts of the Suits Decided by each of the Moonsiffs in the Bombay Presidency in 1838—*continued.*

RUPEES.

SUITS DECIDED ON THEIR MERITS—*continued.*	10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	TOTAL.	
Ahmednuggur Town	373	180	86	20	20	33	10	2	2	1	1	2	–	1	1	1	–	–	–	733	Second Class.
Nassick Town	138	78	34	12	2	1	1	–	–	–	–	–	–	–	–	–	–	–	–	266	Second „
Rahooree	250	195	53	16	4	6	2	–	–	–	–	–	–	2	1	–	–	–	–	529	First „
Mewassah	221	153	61	20	11	12	6	1	2	–	–	–	–	–	–	–	–	–	–	487	Second „
Yeola	199	181	86	30	12	16	5	1	2	–	1	–	–	–	–	–	–	–	–	533	Second „
Sungumner	221	140	55	29	6	12	3	–	2	2	–	–	–	–	–	–	–	–	–	470	First „
Sunnur (N.)	312	235	63	23	11	10	4	2	1	–	1	–	–	–	–	–	–	–	–	662	Second „
Chandore (N.)	18	125	36	17	7	13	5	1	1	–	–	2	–	–	1	–	–	–	–	289	First „
Jamkher	229	99	36	4	4	6	1	–	–	–	–	1	–	–	1	–	–	–	–	381	Second „
Kurnulla	260	160	47	17	3	5	1	1	–	–	–	–	–	–	1	–	–	–	–	495	First „
TOTAL (10)	2,284	1,546	557	188	80	114	38	8	10	3	3	5	–	3	5	1	–	–	–	4,845	
Nusseerabad	147	131	27	14	7	5	4	–	–	–	1	1	1	–	–	–	–	–	–	338	First - Class.
Erundole	90	39	26	4	2	5	–	–	–	–	–	–	–	–	1	–	–	–	–	167	Second „
Dhoolia	170	144	59	23	6	18	10	4	3	–	–	–	–	–	–	2	–	–	1	440	First „
Mundoobar	75	90	49	23	17	26	3	3	4	1	–	–	–	–	–	–	–	–	–	291	Second „
Baylan	100	95	21	10	7	6	1	1	1	–	–	–	–	–	–	–	–	–	–	242	Second „
TOTAL (5)	582	499	182	74	39	60	18	8	8	1	1	1	1	–	1	2	–	–	1	1,478	
Bagulkota	59	62	42	12	7	9	4	–	3	–	–	–	–	1	–	–	–	–	–	199	First - Class.
Haveree	71	120	65	36	21	34	4	2	6	1	1	–	–	7	1	–	–	–	2	371	First „
Sorurdattee	137	129	66	23	15	20	5	1	2	–	–	–	–	–	–	–	–	–	–	398	Second „
Chikoree	63	55	22	6	3	5	–	1	2	–	–	–	–	–	1	–	–	–	–	158	Third „
Rowan	47	37	32	2	5	13	1	–	1	–	–	–	–	–	–	–	–	–	–	138	Third „
Punchayuts	–	1	–	–	–	1	1	–	1	–	–	–	–	–	–	–	–	–	–	4	
TOTAL (6)	377	404	227	79	51	82	15	4	15	1	1	–	–	8	2	–	–	–	2	1,268	
Ahmedabad (12)	887	1,038	784	278	161	294	71	16	34	4	9	10	6	7	20	1	17	2	6	3,645	Abstract of Suits decided on their Merits, —*Vide* pp. 176–178.
Surat (6)	357	455	337	107	60	91	27	5	27	5	3	3	3	10	12	2	4	1	1	1,509	
Broach (7)	1,283	993	624	235	106	190	29	18	29	2	1	9	2	13	11	2	1	–	1	3,549	
Tannah (9)	1,485	999	620	114	77	136	28	6	8	2	2	–	3	5	2	–	5	–	–	3,492	
Rutnagiree (5)	573	308	153	43	32	57	5	5	11	1	–	–	–	7	3	1	–	–	–	1,199	
Poonah (6)	1,832	1,212	463	123	71	129	36	10	17	3	1	6	5	4	1	2	1	3	–	3,931	
Sholapoor (4)	865	539	218	53	39	64	16	4	4	2	–	1	–	4	2	–	1	–	1	1,813	
Ahmednuggur (10)	2,284	1,546	557	188	80	114	38	8	10	3	3	5	–	3	5	1	–	–	–	4,845	
Khandesh (5)	582	499	182	74	39	60	18	8	8	1	1	1	1	–	1	2	–	–	1	1,478	
Dharwar (6)	377	404	227	79	51	82	15	4	15	1	1	–	–	8	2	–	–	–	2	1,268	
TOTAL (70)	10,524	7,993	4,165	1,294	716	1,217	283	84	163	24	21	35	20	61	59	11	29	6	12	26,729	

Suits otherwise disposed of:																					
Ahmedabad City	451	143	57	10	10	9	7	–	4	–	–	1	1	2	–	–	–	1	–	696	First - Class.
Dhundhooka	360	177	78	16	13	18	5	–	6	1	1	–	–	3	–	2	–	–	–	680	First ,,
Nureead	202	124	88	14	14	16	4	–	1	–	–	–	–	–	1	–	–	–	–	464	First ,,
Dholka	283	67	29	19	5	6	1	–	–	–	–	–	–	–	–	–	1	–	–	411	Second ,,
Veerumgaum	133	97	45	11	6	8	5	2	1	–	–	–	–	–	1	1	1	–	–	311	Second ,,
Muhoondha	139	112	45	13	2	14	1	1	2	–	–	–	2	–	1	–	–	–	–	332	Second ,,
Kupurwunj	177	70	38	4	1	3	1	–	–	–	–	–	–	–	–	–	–	–	–	294	Second ,,
Nishmoodabad	149	73	28	11	6	9	2	–	1	–	–	–	–	1	–	–	–	–	–	280	Second ,,
Puremtej	148	55	36	2	5	4	1	–	–	–	–	–	–	–	–	–	–	–	–	251	Third ,,
Gogo	73	57	34	6	11	22	–	2	3	–	–	2	–	2	–	2	2	–	1	217	Third ,,
Oomreth	121	86	42	13	5	9	3	–	1	–	–	–	–	2	–	–	1	–	–	283	Second ,,
Borsud	170	83	56	11	3	8	1	–	–	–	–	–	–	–	1	–	–	–	–	333	Third ,,
Total (12)	2,406	1,144	576	130	81	126	31	5	19	1	1	3	3	10	4	5	5	1	1	4,552	
Surat City	151	74	36	8	3	5	–	1	–	–	–	–	–	1	–	–	–	–	–	279	Second Class.
Ditto	210	141	60	12	3	9	1	–	2	–	–	1	1	–	1	–	–	–	–	441	Second ,,
Bulsar	53	34	23	10	3	4	1	1	1	–	–	–	–	–	–	–	–	–	–	130	First ,,
Oothar	114	44	37	8	3	7	2	–	1	–	–	1	–	–	–	–	–	–	–	217	Second ,,
Soopa	52	43	20	4	4	4	–	–	–	–	–	–	–	–	–	–	–	–	–	127	Third ,,
Bardolee	50	31	21	4	5	5	–	–	1	–	–	–	–	–	–	–	–	–	–	117	Third ,,
Total (6)	630	367	197	46	21	34	4	2	5	–	–	2	1	1	1	–	–	–	–	1,311	
Broach Town	367	83	44	14	3	8	2	1	–	–	–	–	–	1	–	–	–	–	–	523	First - Class.
Ditto	329	74	49	13	7	13	–	3	–	–	–	–	–	–	–	–	–	–	–	488	Second ,,
Ditto	307	77	40	10	7	3	2	–	–	–	–	–	–	–	–	–	–	–	–	446	Third ,,
Ditto	43	6	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	50	Third ,,
Jumboosur	275	128	80	31	8	9	1	–	3	–	–	1	–	–	–	–	–	–	–	536	Second ,,
Hansot	62	34	16	4	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	120	Third ,,
Unklesur	57	28	14	3	2	3	–	–	–	–	–	–	–	–	–	–	–	–	–	107	First ,,
Total (7)	1,440	430	244	75	27	40	5	4	3	–	–	1	–	1	–	–	–	–	–	2,270	
Tannah Town	79	34	21	7	1	3	–	–	–	–	–	–	–	–	–	–	–	–	–	145	First - Class.
Ditto	23	17	7	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	47	Third ,,
Bassein	67	31	11	9	2	2	2	1	1	–	–	–	–	–	–	–	–	–	–	126	Second ,,
Carunjah	83	15	4	1	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	105	Second ,,
Tarapoor	45	30	20	9	1	6	–	1	–	–	–	–	–	–	–	–	–	–	1	113	Third ,,
Kulyan	275	119	30	11	5	4	–	1	1	–	–	–	–	–	–	–	1	–	–	447	First ,,
Punwel	235	76	17	4	1	6	–	–	2	–	–	1	–	–	–	–	–	–	–	342	Second ,,
Mhar	347	109	30	7	7	5	–	–	–	–	–	–	2	–	1	–	2	–	1	511	Second ,,
Pean	153	57	21	2	5	8	1	–	–	–	–	–	–	–	–	–	–	–	–	247	Third ,,
Total (9)	1,307	488	161	50	22	36	3	3	4	–	–	1	2	–	1	–	3	–	2	2,083	

(continued.)

STATEMENTS showing the Number and Amount of the Suits Decided by each of the Moonsiffs in the Bombay Presidency in 1838—*continued.*

SUITS OTHERWISE DISPOSED OF—*continued.*	RUPEES. 10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	TOTAL.	
Rutnagiree Town	151	43	15	3	2	5	–	1	1	–	–	–	–	–	–	–	–	–	–	221	Third Class.
Vijradroog	118	37	9	1	1	2	–	–	–	–	–	–	–	–	–	–	–	–	–	167	First ,,
Unjunwel	189	52	22	2	3	3	1	–	–	–	–	–	–	–	–	–	–	–	–	272	Second ,,
Soovurndroog	171	76	27	9	4	5	1	1	1	–	–	–	1	–	–	–	–	–	–	296	First ,,
Sindhoodroog	80	23	10	4	1	2	–	–	–	–	–	–	–	–	–	–	1	–	–	121	Second ,,
TOTAL (5)	789	231	83	18	11	17	2	2	2	–	–	–	1	–	–	–	1	–	–	1,077	
Poonah City	149	48	20	4	4	3	–	–	2	–	–	–	–	1	–	–	–	–	–	231	First Class.
Ditto	89	77	27	8	5	6	4	–	1	–	–	–	–	1	–	–	–	–	–	218	Second ,,
Ditto	86	38	10	5	2	4	2	–	1	–	1	–	–	–	–	–	–	–	–	149	Second ,,
Joonur	305	138	36	4	5	8	1	1	2	–	–	–	–	2	–	–	–	–	–	502	First ,,
Tullehgaum	252	154	22	5	7	3	3	–	–	–	–	–	–	–	–	–	–	–	–	446	First ,,
Chakum	493	210	22	5	4	7	1	–	–	–	–	–	–	–	–	–	–	–	–	742	Second ,,
TOTAL (6)	1,374	665	137	31	27	31	11	1	6	–	1	–	–	4	–	–	–	–	–	2,288	
Sholapoor Town	118	22	14	2	2	4	–	1	–	–	–	1	–	–	–	–	–	–	–	164	Second Class.
Muhadeh	256	114	25	4	2	2	2	–	1	–	–	–	–	–	–	–	–	–	–	406	Second ,,
Barsee	249	82	31	12	1	7	2	–	–	1	–	–	–	–	–	–	–	–	–	385	First ,,
Hippurgah	11	25	10	7	4	–	–	–	–	–	–	–	–	1	–	–	–	–	–	58	Second ,,
TOTAL (4)	634	243	80	25	9	13	4	1	1	1	–	1	–	1	–	–	–	–	–	1,013	
Ahmednuggur Town	145	37	17	2	–	3	1	–	1	–	–	–	–	–	–	–	–	–	–	206	Second Class.
Nassick Town	103	67	12	3	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	187	Second ,,
Rahooree	111	45	16	2	1	1	–	–	–	–	–	–	–	–	–	–	–	–	–	176	First ,,
Newassah	179	87	32	8	7	7	–	1	–	–	–	–	–	–	1	–	–	–	–	322	Second ,,
Yeola	109	53	21	6	2	5	–	–	–	–	–	–	–	3	1	–	–	–	–	200	Second ,,
Sungumner	199	104	22	5	4	3	–	–	–	–	–	–	–	–	–	–	–	–	–	337	First ,,
Sunnur (N.)	203	116	25	5	–	2	1	–	1	–	–	–	–	–	–	–	–	–	–	353	Second ,,
Chandore (N.)	108	112	32	8	4	10	–	–	–	–	–	–	1	–	–	–	–	–	–	275	First ,,
Jamkher	237	88	16	3	2	1	–	–	1	–	–	–	–	–	–	–	–	–	–	348	Second ,,
Kurnulla	213	63	20	3	3	2	1	–	–	–	–	–	–	–	–	–	–	–	–	305	First ,,
TOTAL (10)	1,607	772	213	45	24	35	3	1	3	–	–	–	1	3	2	–	–	–	–	2,709	

Nusserabad	220	117	31	14	2	5	1	2	—	—	—	—	2	—	—	—	—	—	—	394	First Class.
Erundole	80	24	10	2	4	2	—	—	1	—	—	—	—	—	—	—	—	—	1	134	Second ,,
Dhoolia	188	115	26	18	11	6	3	—	1	—	—	—	—	1	—	—	—	—	2	371	First ,,
Murdoorbar	46	48	15	6	3	6	1	—	—	—	—	—	—	1	—	—	—	—	—	126	Second ,,
Baylan	89	65	19	8	3	4	—	—	—	—	—	—	—	—	—	—	—	—	—	188	Second ,,
TOTAL (5)	623	379	101	48	23	23	5	2	2	—	—	—	2	2	—	—	—	—	3	1,213	
Bagulkota	18	8	10	2	4	4	—	—	—	—	1	—	—	—	—	—	1	—	—	48	First Class.
Haveree	46	45	17	4	1	10	—	—	—	—	—	—	—	—	—	—	—	—	—	123	First ,,
Sirurduttee	88	31	12	6	—	2	—	—	3	—	—	—	—	—	—	—	—	—	—	142	Second ,,
Chikoree	69	23	9	4	—	2	—	—	—	—	—	—	—	—	—	—	—	—	—	107	Third ,,
Rowan	15	7	7	1	—	4	2	—	1	—	—	—	—	—	—	—	—	—	—	37	Third ,,
Punchayuts	—																				
TOTAL (6)	236	114	55	17	5	22	2	—	4	—	1	—	—	—	—	—	1	—	—	457	
Ahmedabad (12)	2,406	1,144	576	130	81	126	31	5	19	1	1	3	3	10	4	5	5	1	1	4,552	
Surat (6)	630	367	197	46	21	34	4	2	5	—	—	2	1	1	1	—	—	—	—	1,311	
Broach (7)	1,440	430	244	75	27	40	5	4	3	—	—	1	—	1	—	—	—	—	—	2,270	
Tannah (9)	1,307	488	161	50	22	36	3	3	4	—	—	1	2	—	1	—	3	—	2	2,083	
Rutnagiree (5)	789	231	83	18	11	17	2	2	2	—	—	—	1	—	—	—	1	—	—	1,077	
Poonah (6)	1,374	665	137	31	27	31	11	1	6	—	1	—	—	4	—	—	—	—	—	2,288	Abstract of Suits otherwise disposed of.—*Vide* pp. 179-180.
Sholapoor (4)	634	243	80	25	9	13	4	1	1	1		1	—	1	—	—	—	—	—	1,013	
Ahmednuggur (10)	1,607	772	213	45	24	85	3	1	3	—	—	—	1	3	2	—	—	—	—	2,709	
Khandeish (5)	623	379	101	48	23	23	5	2	2	—	—	—	2	2	—	—	—	—	3	1,213	
Dharwar (6)	236	114	55	17	5	22	2	—	4	—	—	—	—	—	—	—	1	—	—	457	
TOTAL (70)	11,046	4,833	1,847	485	250	377	70	21	49	2	2	8	10	22	8	5	10	1	6	18,973	
TOTAL SUITS DISPOSED OF:																					
Ahmedabad City	664	301	171	59	30	49	16	2	10	2	1	4	2	4	5	—	4	1	—	1,325	First Class.
Dundhooka	420	283	171	47	30	63	13	1	13	1	4	1	1	4	—	2	2	—	1	1,057	First ,,
Nureead	324	339	231	66	53	56	14	3	6	—	2	1	—	1	2	—	3	—	1	1,102	First ,,
Dholka	331	108	61	28	10	18	9	—	3	—	—	—	—	—	1	1	2	—	—	572	Second ,,
Veergumgaum	182	167	97	31	24	46	14	2	3	1	2	1	1	1	5	1	3	1	1	583	Second ,,
Muhoondha	221	224	145	54	20	43	4	1	4	—	—	—	2	—	1	—	—	—	—	719	Second ,,
Kupurwunj	295	157	94	12	10	15	3	—	1	—	—	1	—	1	—	—	—	—	—	589	Second ,,
Nismoodabad	225	159	91	28	16	20	7	1	5	1	—	—	—	1	1	—	—	—	—	555	Second ,,
Puremtej	167	69	48	8	7	7	1	1	—	—	—	—	—	—	—	—	—	—	—	308	Third ,,
Gogo	81	71	53	13	19	48	7	4	5	—	1	4	1	2	8	2	7	1	4	331	Third ,,
Oomreth	172	171	91	34	15	33	9	4	1	—	—	—	1	2	—	—	1	—	—	534	Second ,,
Borsud	211	133	107	28	8	22	5	2	2	—	—	1	1	1	1	—	—	—	—	522	Third ,,
TOTAL (12)	3,293	2,182	1,360	408	242	420	102	21	53	5	10	13	9	17	24	6	22	3	7	8,197	

(continued.)

STATEMENTS showing the Number and Amount of the Suits Decided by each of the Moonsiffs in the Bombay Presidency in 1838—*continued.*

TOTAL SUITS DISPOSED OF—*continued.*	RUPEES. 10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	TOTAL.	
Surat, City	268	204	137	43	21	22	5	1	7	2	2	1	1	3	1	–	1	–	–	719	Second Class.
Ditto	335	325	183	44	21	37	10	2	10	2	1	2	1	5	6	–	3	1	–	988	Second ,,
Bulsar	83	77	55	24	12	15	3	2	5	1	–	–	–	1	2	–	–	–	–	280	First ,,
Oothar	162	101	95	24	13	27	10	2	6	–	–	2	1	1	1	2	–	–	1	448	Second ,,
Soopa	62	57	30	6	7	12	1	–	1	–	–	–	1	1	2	–	–	–	–	180	Third ,,
Bardolee	76	58	34	12	7	12	2	–	3	–	–	–	–	–	1	–	–	–	–	205	Third ,,
TOTAL (6)	986	822	534	153	81	125	31	7	32	5	3	5	4	11	13	2	4	1	1	2,820	
Broach Town	688	323	164	68	30	37	11	3	8	–	–	1	–	2	3	1	–	–	–	1,339	First Class.
Ditto	590	253	188	53	32	47	3	5	1	–	–	3	1	2	3	–	–	–	–	1,181	Second ,,
Ditto	554	216	135	56	23	30	7	5	4	–	–	3	–	2	2	1	–	–	–	1,038	Third ,,
Ditto	111	351	17	10	–	2	–	1	–	–	–	–	–	–	–	–	–	–	–	179	Third ,,
Jumboosur	490	351	214	83	30	68	8	3	13	1	1	1	1	8	2	–	1	–	1	1,278	Second ,,
Hansot	145	129	79	19	7	24	2	–	1	1	–	1	–	–	–	–	–	–	–	408	Third ,,
Unklesur	145	113	71	21	11	22	3	3	5	–	–	1	–	–	1	–	–	–	–	396	First ,,
TOTAL (7)	2,723	1,423	868	310	133	230	34	22	32	2	1	10	2	14	11	2	1	–	1	5,819	
Tannah Town	316	230	180	23	7	14	2	–	–	1	–	–	–	–	–	–	–	–	–	773	First Class.
Ditto	91	67	43	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	201	Third ,,
Bassein	255	162	140	41	29	33	6	2	2	–	–	–	1	–	1	–	–	–	–	672	Second ,,
Carunjah	216	77	41	11	1	9	–	–	–	–	–	–	–	–	–	–	–	–	–	355	Second ,,
Tarapoor	70	80	56	13	9	25	4	2	1	1	1	–	–	–	–	–	1	–	1	264	Third ,,
Kulyan	548	282	96	19	22	32	6	1	7	–	1	–	–	–	–	–	2	–	–	1,016	First ,,
Punwel	471	210	78	19	8	17	4	2	2	–	–	1	1	2	–	–	1	–	–	816	Second ,,
Mhar	469	192	71	18	13	15	4	1	–	–	–	–	3	3	1	–	4	–	1	795	Second ,,
Pean	356	187	76	20	10	27	5	1	–	–	–	–	–	–	1	–	–	–	–	683	Third ,,
TOTAL (9)	2,792	1,487	781	164	99	172	31	9	12	2	2	1	5	5	3	–	8	–	2	5,575	
Rutnagiree Town	337	115	56	12	7	17	–	4	3	–	–	–	–	–	1	–	–	–	–	552	Third Class.
Vijradroog	210	81	37	8	7	14	–	1	2	1	–	–	–	2	1	–	–	–	–	364	First ,,
Unjunwel	265	87	37	4	8	11	2	–	1	–	–	–	–	1	–	–	–	–	–	416	Second ,,
Soovundroog	255	153	56	23	16	16	4	1	5	–	–	–	1	2	1	–	–	–	–	533	First ,,
Sindhoodroog	215	103	50	14	5	16	1	1	2	–	–	–	–	2	–	–	2	–	–	411	Second ,,
TOTAL (5)	1,282	539	236	61	43	74	7	7	13	1	–	–	1	7	3	–	2	–	–	2,276	

Poonah City	377	253	100	27	13	17	3	–	7	2	–	2	2	2	3	1	–	1	–	810	First Class.
Ditto	334	266	123	38	25	51	16	2	8	–	1	2	3	3	3	1	–	1	–	877	Second „
Ditto	339	205	84	32	13	22	7	4	3	1	1	1	–	1	5	–	1	1	–	720	Second „
Joonur	750	360	121	24	22	38	11	2	3	–	–	–	–	2	–	–	–	–	–	1,333	First „
Tullehgaum	499	358	87	17	19	15	7	1	2	–	–	–	–	–	1	–	–	–	–	1,006	First „
Chakum	907	435	85	16	6	17	3	2	–	–	–	1	–	–	1	–	–	–	–	1,473	Second „
TOTAL (6)	3,206	1,877	600	154	98	160	47	11	23	3	2	6	5	8	13	2	1	3	–	6,219	
Sholapoor Town	364	156	85	26	13	27	6	2	1	1	–	1	–	1	–	–	1	–	1	685	Second Class.
Muhadeh	513	272	67	11	8	10	3	1	2	–	–	–	–	1	1	–	–	–	–	889	Second „
Barsee	546	259	111	29	15	36	10	–	–	2	–	1	–	2	1	–	–	–	–	1,012	First „
Hippurgah	76	95	35	12	12	4	1	2	2	–	–	–	–	1	–	–	–	–	–	240	Second „
TOTAL (4)	1,499	782	298	78	48	77	20	5	5	3	–	2	–	5	2	–	1	–	1	2,826	
Ahmednuggur Town	518	217	103	22	20	36	11	2	3	1	1	2	–	1	1	1	–	–	–	939	Second Class.
Nassick Town	241	145	46	15	3	2	1	–	–	–	–	–	–	–	–	–	–	–	–	453	Second „
Rahooree	361	240	69	18	5	7	2	–	–	–	–	–	–	2	1	–	–	–	–	705	First „
Newassah	400	240	93	28	18	19	6	2	2	–	–	–	–	–	1	–	–	–	–	809	Second „
Yeola	308	234	107	36	14	21	5	1	2	–	1	–	–	3	1	–	–	–	–	733	Second „
Sungumner	420	244	77	34	10	15	3	–	2	2	–	–	–	–	–	–	–	–	–	807	First „
Sunnur (N.)	515	351	88	28	11	12	5	2	2	–	1	–	–	–	–	–	–	–	–	1,015	Second „
Chandore (N.)	189	237	68	25	11	23	5	1	1	–	–	2	1	–	1	–	–	–	–	564	First „
Jamkher	466	187	52	7	6	7	1	–	1	–	–	1	–	–	1	–	–	–	–	729	Second „
Kurnulla	473	223	67	20	6	7	2	1	–	–	–	–	–	–	1	–	–	–	–	800	First „
TOTAL (10)	3,891	2,318	770	233	104	149	41	9	13	3	3	5	1	6	7	1	–	–	–	7,554	
Nusseerabad	376	248	58	28	9	10	5	2	–	–	1	1	3	–	–	–	–	–	–	732	First Class.
Erundole	170	73	36	6	6	7	–	–	1	–	–	–	–	–	1	–	–	–	1	301	Second „
Dhoolia	385	259	85	41	17	24	13	4	4	–	–	–	–	1	–	2	–	–	3	811	First „
Murdurbar	121	138	64	29	20	32	4	3	4	1	–	–	–	1	–	–	–	–	–	417	Second „
Baylan	189	160	40	18	10	10	1	1	1	–	–	–	–	–	–	–	–	–	–	430	Second „
TOTAL (5)	1,205	878	283	122	62	83	23	10	10	1	1	1	3	2	1	2	–	–	4	2,691	

(*continued.*)

STATEMENTS shewing the Number and Amount of the Suits Decided by each of the Moonsiffs in the Bombay Presidency in 1838.—*continued.*

RUPEES.

TOTAL SUITS DISPOSED OF—*continued.*	10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	TOTAL.	
Bagulkota	77	70	52	14	11	13	4	–	3	–	1	–	–	1	–	–	1	–	–	247	First Class.
Haveree	117	165	82	40	22	44	4	2	6	1	1	–	–	7	1	–	–	–	2	494	First ,,
Sirurduttee	225	160	78	29	15	22	5	1	5	–	–	–	–	–	–	–	–	–	–	540	Second ,,
Chikoree	132	78	31	10	3	7	–	1	2	–	–	–	–	–	1	–	–	–	–	265	Third ,,
Rowan	62	44	39	3	5	17	3	–	2	–	–	–	–	–	–	–	–	–	–	175	Third ,,
Punchayuts	–	1	–	–	–	1	1	–	1	–	–	–	–	–	–	–	–	–	–	4	
TOTAL (6)	613	518	282	96	56	104	17	4	19	1	2	–	–	8	2	–	1	–	2	1,725	
Ahmedabad (2)	3,293	2,182	1,360	408	242	420	102	21	53	5	10	13	9	17	24	6	22	3	7	8,197	Abstract of Total Suits disposed of.—*Vide* pp. 181–184.
Surat (6)	986	822	534	153	81	125	31	7	32	5	3	5	4	11	13	2	4	1	1	2,820	
Broach (7)	2,723	1,423	868	310	133	230	34	22	32	2	1	10	2	14	11	2	1	–	1	5,819	
Tannah (9)	2,792	1,487	781	164	99	172	31	9	12	2	2	1	5	5	3	–	8	–	2	5,575	
Rutnagiree (5)	1,282	539	236	61	43	74	7	7	13	1	–	–	1	7	3	–	2	–	–	2,276	
Poonah (6)	3,206	1,877	600	154	98	160	47	11	23	3	2	6	5	8	13	2	1	3	–	6,219	
Sholapoor (4)	1,499	782	298	78	48	77	20	5	5	3	–	2	–	5	2	–	1	–	1	2,826	
Ahmednuggur (10)	3,891	2,318	770	233	104	149	41	9	13	3	3	5	1	6	7	1	–	–	–	7,554	
Khandeish (5)	1,205	878	283	122	62	83	23	10	10	1	1	1	3	2	1	2	–	–	4	2,691	
Dharwar (6)	613	518	282	96	56	104	17	4	19	1	2	–	–	3	2	–	1	–	2	1,725	
TOTAL (70)	21,490	12,826	6,012	1,779	966	1594	353	105	212	26	24	43	30	83	79	15	40	7	18	45,702	

GENERAL ABSTRACT OF THE ABOVE.

Decided on Merits	10,524	7,993	4,165	1,294	716	1217	283	84	163	24	21	35	20	61	59	11	29	6	12	26,729	page 178.
Otherwise disposed of	11,046	4,833	1,847	485	250	377	70	21	49	2	3	8	10	22	8	5	10	1	6	18,973	page 181.
TOTAL DISPOSED OF	21,490	12,826	6,012	1,779	966	1594	353	105	212	26	24	43	30	83	67	15	40	7	18	45,702	

No. 3.
On the Judicial Establishments of the Presidencies of Bengal Madras and Bombay.

REPORT upon Re-organization of the Native Judicial Establishments of the three Presidencies.

1. WITHOUT going into any lengthened detail of the steps by which the Report in question has attained its present shape, I may briefly say, that I entirely concur with my colleagues in their proposals for conferring criminal powers on the Principal Sudder Ameens, the removal of the assistant judge from each zillah station where a Principal Sudder Ameen is already maintained, and, to a certain extent, their plan for reducing the Sudder Ameens, and replacing them by moonsiffs.

2. The difference between us amounts to this, that whereas the majority of the Commission would entirely abolish the Sudder Ameens as a class, at Bombay, as well as elsewhere, I would retain in the Bombay Presidency just so many as would give to each of the three detached assistant judges (at Broach, Dhoolia and Rutnagiree) an experienced officer, analogous to, if not identical with, the officers (Principal Sudder Ameens) whom the zillah judges are to have as their chief aids in the administration of justice, both civil and criminal.

3. I would for this purpose give to each an officer with the same civil and criminal powers as are now proposed to be conferred on Principal Sudder Ameens, and for the same object, viz. the relieving the European officer in his duties in both departments.

4. I am loth to give my concurrence to any plan which so materially reduces the native judicial establishment of the Bombay Presidency, as the taking away 14 appointments (more than two to each zillah) between the first class moonsiffs and the Principal Sudder Ameens, particularly when the value of appointments in that highest class is also reduced, as the plan of making two grades will do. I concur in that plan entirely; but rather than assent to the further reduction of the native judicial service; I would advocate the Sudder Ameens at the three detached districts being promoted to Principal Sudder Ameens of the second class. If the increase of 50 rupees per month to each, which this promotion would involve, be objected to, I would leave those three officers on the pay they now get; but I am clearly of opinion that there must be an officer of rank better than a first class moonsiff in those districts.

5. The senior assistant judge may not, under his present limited jurisdiction, stand so much in need of this assistance as a zillah judge; but I conceive he cannot be altogether deprived, as the plan proposed by the majority of the Commission tends to do, of the aid of an officer higher than a moonsiff. It is on many accounts desirable and necessary to have a person on the spot fit to take charge of so remote a station in case of vacancy from casualty or illness, other than perhaps a young assistant collector, during the period that elapses before orders can be received, and a successor actually reach the spot.

6. Should it ever be proposed, as is not unlikely, to allow zillah magistrates to make over to the Principal Sudder Ameen of the zillah court such of the higher cases within his own competency to try as he has not leisure to dispose of (and for want of some such aid the Government have been compelled to resort to the extraordinary measure of converting the surgeons of the civil stations into assistant magistrates), I think the joint magistrates, as well as the people of the subordinate district of the zillah, may very justly claim to have the same facilities for speedy disposal of cases arising within their division, as would, under such an arrangement as I have supposed, be conferred upon the population of the principal division of the zillah. In that case Government would have again to do what it is now proposed to undo, viz. to re-organize an establishment which already exists, and which, without any increase of charge, may be made to fit in to the proposed establishment on the new scale. Although it has been thought fit to keep a judicial officer of inferior powers at those distant stations, because it is not consistent with economy to pay an officer higher, as the conferring superior powers would require Government to do, I think the reasons for having a zillah judge in Khandeish and Rutnagiree, if not at Broach, quite as strong as were advanced for Sholapoor, and the salary we propose to save by abolition of assistant judges at the three zillah stations, would fully cover the expense; because 1,800 rupees a month would be ample for the pay of a judge with full powers, and the remaining 100 rupees would cover any extra establishment that might be found necessary, or may perhaps be altogether saved.

7. The hardships of double attendance in the case of prosecutors and witnesses,

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On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

the delay in bringing offenders to trial, the expense of circuits, and the other evils which led to the appointment of a zillah judge at Sholapoor, apply with nearly, if not quite, equal force to Khandeish and the other two stations where sessions are now held only twice a year. The judges of those zillahs being relieved from circuit duties, as well as from the civil business of a great portion of their present jurisdiction, would have less objection to urge against the removal of the assistant judge whom they now have to aid them therein; and the general administration of justice throughout the Presidency will be materially improved, without the slightest increase of expense in the covenanted branch, and with a positive saving in the native branch of the judicial establishment of the Presidency.

8. The state of the civil service of the Bombay Presidency warrants this apparent promotion, for there is not one of the officers in question who has not been for many years entitled by his standing to be a zillah judge. The country and the service would be equally benefited by the conversion, without cost to the State, of six assistant judgeships into three zillah judgeships on a lower scale of pay.

9. There is another point, which, as not connected with the subject of our Report, may be better treated by me in this separate minute. I allude to the unnecessary distinction made between the pay of the native judicial officers, according as they are serving in the Surat, Tannah and Dharwar zillahs, or in the other three. The amount deducted from the servants in the other three zillahs may appear trifling to us, but to them it must be a serious loss. The distinction is caused by the orders passed when the new was substituted for the old currency in 1833. The Surat and Tannah establishments, having always been paid in Surat or Bombay rupees, got their pay in the new rupees in full; and the Dharwar zillah having been created since that year, has had the benefit of the new currency. But those of the other zillah who used to be paid in even sums in an inferior rupee, had their pay reduced by the fraction in which the new rupee was better than the old. I should hope a general revision of judicial establishments throughout India, as we propose, will be made the occasion of equalizing the pay of each grade every where throughout the Bombay Presidency. The amount of increase is very small, as will be seen from the annexed table, and will be fully covered by the changes therein exhibited. Those changes are explained in the accompanying notes, which I wish to have submitted to the local authorities, as the best judges of the feasibility of adopting the spirit of them in any general plan for re-modelling the judicial establishment of the Bombay Presidency.

Calcutta, 17 May 1843. (signed) *H. Borradaile.*

MEMORANDUM by Mr. *Borradaile*, explanatory of his Sketch for a Revised Establishment of Native Judicial Functionaries in the Bombay Presidency.

THE accompanying sketch of a revised establishment for the native judicial establishment of the Bombay Presidency has been framed according to the following propositions.

1. That there ought to be a Principal Sudder Ameen at the seat of every zillah court, to decide only the higher class of cases, that is, only such as are above the moonsiff's jurisdiction, 5,000 rupees, that he may have time to assist the zillah judge in disposing of criminal business to a certain extent.

2. That an additional moonsiff on the third class pay should be appointed at each zillah court, to take up the lighter civil cases on which the Principal Sudder Ameen's time has been hitherto employed.

3. That there ought in like manner to be a Sudder Ameen at the seat of every detached assistant judge, to relieve him and the joint magistrate from a part of their criminal duties, and to take up all civil cases above the moonsiff's jurisdiction.

4. That with such efficient aid at every station of a collectorate, third class moonsiffs will suffice to decide the ordinary civil business of the Sudder stations.

5. That it is on principle advisable that the higher, and therefore better trained and more experienced moonsiffs, be ordinarily sent to the towns and places of greater note at a distance from the Sudder station, and the moonsiffs of the lowest grade be posted to the Sudder stations and to places adjacent to the same, so as to be under the direct supervision of the judge or assistant judge,

judge, and subject to the more severe training and scrutiny which the facility of appeal and complaint will necessarily lead to. The frequency of appeals from the remoter stations of the district would probably be much diminished by this rule.

On this point I may quote the following (15th) paragraph of the honourable Mr. Sutherland's minute on the Sholapoor correspondence, already before the Government of India.

"Para. 15. I think it would be a beneficial arrangement to station in distant parts, furthest from the eye of the judge, those commissioners (moonsiffs) who have had most experience, so that new appointments should be as near as possible within the range for which the greatest number of appeals are usually made, so that the control of the judges should correct errors, and they by this means gain experience on as sound principle as could be acquired, and would thus be likely to give greater satisfaction (when stationed) in distant parts."

6. That there seems no reason why a third class of moonsiffs should not exist in the Deccan, as now exists in Goojurat and Dharwar. The case of Khandeish, where, owing to climate and distance it is difficult to get respectable and trustworthy men to accept employment at reduced rates, should continue an exception.

7. Table (A.) having been arranged on the above rules, very little further explanation will be requisite. The addition at each station of a zillah court of one additional moonsiff (third class) to relieve the Principal Sudder Ameen from the suits of 5,000 rupees and under; and the abolition of all Sudder Ameens, except those at Broach, Dhoolia and Rutnagiree, are the two changes of general moment. Some of these changes proposed can only be prospective, as vacancies occur among the higher grades of officers.

Ahmedabad. The first moonsiff should be removed from the city to Gogo, not only because that town is remote from the Sudder station, at least 100 miles, and is absolutely cut off during part of the year from the capital by the state of the intervening marshy country, but because a much larger proportion of cases, involving large amounts (viz. 21 above 500 rupees), occurs there than at any other moonsiffee in the whole Presidency. The first moonsiff would be removed from Unkuleshwar (only one mile from Broach) to Jumboosur, a large seaport town.

Broach.

Poonah. The first moonsiff would be stationed at Joonur, where the work is much greater than at Indapoor, now the station of a Sudder Ameen.

Ahmednuggur. The first moonsiff would be placed at Yeola, a large manufacturing town on the high road to Khandeish, and much more remote from the capital, and of more note than Kurnulla, Sungumnur or Rahoree.

Nassick. A first moonsiff would answer all the purpose of a Sudder Ameen there.

Principal Sudder Ameens. The proportion of Principal Sudder Ameens of the first class would be as one to three, which is higher than is proposed for the other Presidencies; but it is necessary to give one to each of the two great provinces into which the Presidency is divided.

If it be thought fit to promote the three Sudder Ameens at detached stations to Principal Sudder Ameens of the second class, the proportion would be as one to five, rather less than the ratio proposed for the other Presidencies. In proposing Ahmedabad in Goojurat, and Ahmednuggur in the Deccan respectively, for the station of the Principal Sudder Ameen of the first class, I look to the greater labour in each case entailed on them. In the Northern zillah, there is neither an assistant judge nor Principal Sudder Ameen in the subordinate division; and the subdivision of the late Poonah zillah into two, leaves the duties of Principal Sudder Ameen at Nuggur far more onerous and important than those of the same officer at Poonah will be, under either the old or new system.

Stamp Regulation. I wish to take the opportunity of handing up the statements of suits decided in a year by the judicial functionaries under the Bombay Presidency, to draw the attention of the Government of that Presidency to a fact brought to light by an analysis of those statements; viz. that the amount of the stamp duty would seem to regulate the value at which the plaints are laid, much more than could be expected, leading to a suspicion that the rates of stamp duty, as now graduated, tempt the community in many cases to evade the higher rates of duty. If this result is brought about by direct cheating, the temptation to do so ought to be reduced; if the public are driven to give up a portion of their just demands rather than pay an exorbitant difference of duty, it is a hardship from which they ought to be relieved.

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It is to be regretted, that in drawing up the form in which the statements have been framed, I had not contemplated the chance of this result, and made the columns of value tally exactly with the respective rates of stamp duty, but they still come sufficiently near to warrant my saying, with some degree of confidence, that the fact is as I have put it.

It is quite possible that the remarkable effect which I have here attributed to the sudden rises in the scale of stamp duty may be more apparent than real, and may be caused by the use of the term "under" in the statements of the Law Commission, instead of the words "not exceeding," of the Stamp Regulation. The use of the latter words, however, if causing any difference at all, should tend to make the case still stronger in favour of the view I have taken.

Whether Government will think it worth while, should more specific inquiry on this point confirm the suspicion, to alter the present schedules of the Stamp Regulation, and substitute a more gradually progressive scale, is matter for their consideration; but I think it my duty thus to bring the circumstance to their notice.

Passing by the columns of smaller amounts, up to 100 rupees, which correspond less closely with the rates of stamp duty, I would point more particularly to the difference between the subsequent columns, where, following the gradually increasing ratio of the values, the number of suits filed should steadily decrease, instead of which, they seem to increase or decrease exactly in proportion to the rate of duty.

It is a strong argument in favour of a scale increasing by regular gradations in some proportion to the amount sued for, that where the existing scale is framed on that principle up to 50 rupees, the ratio of the suits seems to correspond very nearly to it, that is, the scale does not appear to affect the number of suits there, as it does when the rise is very great. On this ground it is fair to surmise that the revenue will increase in proportion as the temptation to evade it is diminished.

It is unnecessary to specify the instances, as the annexed table will clearly exhibit them at a glance.

The most striking are noted under the letters A. to E.

The loss to Government cannot be very closely calculated, but may be surmised from one case.

The number of suits filed under 200 rupees was -	Cases	2,391
Yielding a revenue of - - - - - - -	Rupees	23,910
Suppose only one-tenth of these should have paid under the 300 rupees column - - - - - - - - - -		239
Loss to Government, - - - - - -	Rupees	2,390
Suppose one-fourth of these should have gone under the 300 rupees column - - - - - - - -	Suits	597
Gives a loss to Government of 10 rupees in each case - -		5,977

Very nearly 6,000 rupees in one year.

Calcutta, 17 May 1843. (signed) *H. Borradaile.*

STATEMENT showing the Value of Original Suits Decided by the Judicial Functionaries under the Bombay Presidency in one year, 1838, and the Rates of Stamp Duty affecting the same.

Rupees -	10	25	50	75	100	200	300	400	500	600	700	800	900	1,000	2,000	2,500	3,000	4,000	5,000	6,000	7,000	8,000	9,000	10,000	upwards of 10,000
Stamp for Plaint of -	*Annas* 8	*Rs.* 2	*Rs.* 4	*Rs.* 5	*Rs.* 7	*Rs.* 10	*Rs.* 20	*Rs.* 30	30	50	50	50	50	50	70	*Rs.* 100	100	*Rs.* 150	150	*Rs.* –	200	*Rs.* –	250	–	–
No. of Suits decided for	28,870	17,010	7,994	2,504	1,412	2,391 A.	529	176	355 B.	43	44	65	48	119	143 C.	27	64 D.	15	32 E.	11	1	1	2	6	25

N. B.—The above has been taken from the Abstract Statement of Suits disposed of, handed up with the Report of the Law Commission of the 17th May 1843.

(signed) *H. Borradaile.*

TABLE (A.)

STATEMENT, showing the present Strength, Emoluments and Disposition of the NATIVE JUDICIA

ZILLAHS OR JUDGESHIPS.	PRESENT NATIVE JUDICIAL ESTABLISHMENT.																PROPOSED BY MR. BORRADAIL									
	Ahmedabad.		Surat.		Konkans.		Poonah.	Sholapore.	Ahmednuggur.			Dharwar.		TOTAL Present Establishment.	Ahmedabad.		Surat.		Konkans.		Poonah.	Sholapore.	Ahmednu	
COLLECTORATES.	Ahmedabad.	Kaira.	Surat.	Broach.	Tannah.	Rutnagiree.	Poonah.	Sholapore.	Ahmednuggur.	Nassick.	Khandeish.	Dharwar.	Belgaum.		Ahmedabad.	Kaira.	Surat.	Broach.	Tannah.	Rutnagiree.	Poonah.	Sholapore.	Ahmednuggur.	Nassick.
Principal Sudder Ameens -	467 8	- -	500	- -	500	- -	480	- -	480	-	- -	500	-	- -	600	- -	400	- -	400	- -	400	- -	600	-
Sudder Ameens - - - 1	327 8	327 8	350	350	- -	351	336	336	336	336	334 8	350	350	- -										
Sudder Ameens - - - 2	327 8	- -	- -	- -	- -	- -	336	336	- -	-	- -	- -	-	- -	- -	- -	- -	350	- -	350	- -	-	- -	-
Class First - 1	187 -	187 -	200	200	200	200	192	192	192	192	191 8	200	200	- -	200	200	200	200	200	200	200	200	200	200
Class First - 2	187 -	- -	- -	200	200	200	192	- -	192	-	191 8	- -	-	- -	200	200	- -	- -	- -	200	- -	200	200	-
Class First - 3	- -	- -	- -	- -	- -	- -	192	- -	192															
Class Second - Moonsiffs - 1	140 8	140 8	150	150	150	150	144	144	144	144	143 8	- -	150	- -	150	150	150	150	150	150	150	150	150	15
Class Second - Moonsiffs - 2	140 8	140 8	150	150	150	150	144	144	144	144	143 8	- -	-	- -	150	150	150	- -	150	- -	150	150	150	15
Class Second - Moonsiffs - 3	- -	140 8	150	- -	150	- -	144	144	144	-	- -	- -	-	- -	150	150	- -	- -	150	- -	150	150	150	-
Class Second - Moonsiffs - 4	- -	140 8	- -	- -	150	- -	- -	- -	144	-	- -	- -	-	- -	- -	- -	- -	- -	150	- -	150	- -	150	-
Class Second - Moonsiffs - 5	- -	- -	- -	- -	150	- -	- -	- -	- -	-	- -	- -	-	- -	- -	- -	- -	- -	- -	- -	150	- -	- -	-
Class Third - 1	93 8	93 8	(*)	100	100	100	- -	- -	- -	-	- -	- -	100	- -	100	100	100	100	100	100	100	100	100	10
Class Third - 2	93 8	- -	- -	100	100	- -	- -	- -	- -	-	- -	- -	100	- -	100	100	100	100	100	100	100	- -	100	-
Class Third - 3	- -	- -	- -	100	100	- -	- -	- -	- -	-	- -	- -	-	- -	100	- -	100	100	100	- -	100	- -	100	-
Class Third - 4	- -	- -	- -	- -	100	- -	- -	- -	- -	-	- -	- -	-	- -	100	- -	- -	100	100	- -	- -	- -	- -	-
Class Third - 5	- -	- -	- -	- -	- -	- -	- -	- -	- -	-	- -	- -	-	- -	- -	- -	- -	100	100	- -	- -	- -	- -	-
Class Third - 6	- -	- -	- -	- -	- -	- -	- -	- -	- -	-	- -	- -	-	- -	- -	- -	- -	- -	100	- -	- -	- -	- -	-
TOTAL PRESENT ESTABLISHMENT	1,964 8	1,170 -	1,500	1,350	2,050	1,151	1,824	1,296	1,968	816	1,004 8	1,050	900	18,044	1,850	1,050	1,200	1,200	1,800	1,100	1,650	950	1,900	0
INCREASE - - - - *Rupees*															- -	- -	- -	- -	- -	- -	- -	- -	- -	-
DECREASE - - - - *Rupees*															164 8	120	300	150	250	51	174	346	68	

(*) In 1838 there were two third-class Moonsiffs at Surat; they seem to have been absorbed.

N. B.—In this sketch, I have adopted the proposition

BLE (A.)

L ESTABLISHMENT of the BOMBAY PRESIDENCY, contrasted with that suggested by Mr. *Borradaile*.

E.							DISTRIBUTION OF THE FOREGOING PROPOSED BY MR. BORRADAILE.																	
ggur.	Dharwar.		Number of each Class.		TOTAL Proposed Establishment.		Ahmedabad.		Surat.		Konkans.		Poonah.	Sholapore.	Ahmednuggur.			Dharwar.	
Khandeish.	Dharwar.	Belgaum.	Present List.	New List.			Ahmedabad.	Kaira.	Surat.	Broach.	Tannah.	Rutnagiree.	Poonah.	Sholapore.	Ahmednuggur.	Nasiek.	Khandeish.	Dharwar.	Belgaum.
- -	400	-	6	6	-	-	City - -	- - -	City -	- -	Town -	- - -	City - -	- - -	City - -	- -	- - -	Town.	
350	- -	-	14	3	-	-	- - -	- - -	- -	Town -	- -	Town - -	- - -	- - -	- - -	- -	Dhoolia.		
200	200	200	-	-	-	-	Dholka -	Town -	Bulsar	Jumboosur	Punwel -	Rajapoor -	Jooneer -	Barsee -	Kurdeh -	Town -	Malegaum -	Hoobly -	Town.
200	200	200	22	21	-	-	Gogo -	Nureead -	- -	- -	- -	Sindhoodroog	- - -	Town -	Yeola -	- -	Nusseerabad	Haveree -	Bagulkota.
150	150	- -	150	-	-	-	Dholka -	Muhoonda -	City -	Town -	Mhar -	Soovurndroog	City - -	Town -	Rahoree -	Sinnur -	Baglan -	- - -	Sounduttee.
150	150	- -	-	-	-	-	Veerumgaum	Kupurwunj	Oolpar	- -	Kulyan -	- - -	City - -	Mudaheh -	Sungumner	Chandore	Nundoorbar.		
- -	- -	-	33	31	-	-	Dhundhooka	Oomrith -	- -	- -	Bassein -	- - -	Tullehgaum	Hippurgah -	Kurmulla.				
- -	- -	-	-	-	-	-	- - -	- - -	- -	- -	Carunjah	- - -	Chakun -	- - -	Jamkhir.				
- -	- -	-	-	-	-	-	- - -	- - -	- -	- -	- -	- - -	Indapoor.						
100	100	-	-	-	-	-	City - -	Borsud -	City -	Town -	Town -	Town - -	City - -	Town -	City - -	Town -	- - -	P. S. A. -	Chikoree.
- -	- -	100	-	-	-	-	City - -	Mehmoodabad	P. S. A.	Town -	P. S. A. -	Unjunwel -	City - -	- -	P. S. A. -	- -	- - -	- -	Rowan.
- -	- -	-	-	-	-	-	P. S. A. -	- - -	P. S. A.	Town -	Kulyan -	- - - -	P. S. A. -	- - -	Newassah.				
- -	- -	-	13	33	-	-	Purantij -	- - -	- -	- -	Hansot -	Kulyan.							
- -	- -	-	-	-	-	-	- - -	- - -	- -	- -	Unklesur	Tarapoor.							
- -	- -	-	-	-	-	-	- - -	- - -	- -	- -	Penn.								
600	1,050	900	750	-	-	16,000	-	TOTAL PROPOSED ESTABLISHMENT											
- -	45	8	-	-	-	45	8												
216 -	-	150	150	-	-	2,089	8												
NET DECREASE - - -					*Rupees*	2,044	-												

of the Commission for two rates of pay to the Principal Sudder Ameens, 600 rupees, and 400 rupees. The letters P. S. A. in these columns, and the *lines* under salaries in the former part, denote the additional Moonsiffs for relieving the Principal Sudder Ameens from the small suits.

(signed) *H. Borradaile.*

No. 3.
On the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

Leg. Cons. 5 July 1843. No. 15.

RESOLUTION.

READ a letter from the Indian Law Commissioners, dated 17th May 1843, reporting on the several Judicial Establishments of the Presidencies of Bengal, Madras and Bombay.

Ordered, That 250 copies of the above Report be printed, and distributed in the following manner:

Honourable Court of Directors - - - - -	40
Members of Council - - - - - -	4
Government of Bengal - - - - -	75
Lieutenant-governor North Western Provinces -	50
Government of Fort Saint George - - -	30
Government of Bombay - - - - -	20
Law Commissioners - - - - - -	10
Governor-general - - - - - -	2
Judges Supreme Courts, Calcutta, Fort St. George and Bombay - - - - - - -	7
Advocate-general - - - - - -	1
	239

Leg. Cons. 5 July 1843. No. 16.

From *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, to Secretaries to the Governments of Bengal (No. 51), Fort Saint George (No. 145), Bombay (No. 146), and Agra (No. 147); dated 5 July 1843.

Sir,

I AM directed by the honourable the President in Council to forward to you the accompanying printed copies of a Report by the Indian Law Commissioners, dated 17th May last, on the Judicial Establishments of the Presidencies of Bengal, Madras and Bombay and to request that, with the permission of the you will distribute the same among the authorities of the Presidency, and forward for the consideration of the Supreme Government the opinions they may form, with the sentiments of his in Council, on the several recommendations of the Law Commissioners.

2. Copies of the former Report of the Law Commissioners, dated 2d July last, were despatched to your address on the 2d November last.

I have, &c.

(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

Fort William, 5 July 1843.

—No. 4.—

ON THE RULES REGARDING REVIEWS OF JUDGMENT FRAMED BY THE SUDDER COURT OF CALCUTTA.

NOTE by the Officiating Secretary.

Jud. Cons. 20 Aug. 1838. No. 1.

MY connexion with the Judicial Department being about to cease, in consequence of my appointment to the Sudder Board of Revenue, I solicit the permission of the honourable Board to submit for their consideration the result of my observations during the three last years upon the practical working of a branch of administration, second to none in moment.

2. I refer to the agency at present employed for the superintendence and control of the general administration of civil and criminal justice; a subject which, as the papers cited on the margin (copies of which are appended to this note) will show, has recently engaged the attention of the honourable Court of Directors, and of the Right honourable the Governor of Bengal, with a view to the devising of means for the more effective performance of the most important functions above-mentioned.

Despatch from the Court of Directors to the Government of Bengal, dated 7th October 1835.
Letter from Mr. Secretary Mangles to Register of Sudder Court, forwarding Extracts from the above Despatch, dated 21st June 1836.
Sudder Court's reply to the above, dated 2d September 1836.
Para. 4 of Despatch from Governor of Bengal to honourable Court of Directors, dated 30th May 1837.

3. The honourable Court's letter of the 7th of October 1835, was founded on a "proposition made by the Governor-general (Lord William Bentinck), that one of the judges of each of the two courts of Sudder Dewanny and Nizamut Adawlut should proceed on an annual tour of inspection, and visit each of the districts within the range of their jurisdiction;" a proposition which "received no support either from the members of Council or from the judges of those courts," and which, as I think, the objections urged to it by the honourable Court clearly show, could not be expediently adopted.

4. I hope that I may also, without presumption, be allowed to say that the reasons stated by his Lordship the Governor of Bengal, in his secretary's letter to the Sudder Court of the 21st June 1836 (in the validity of which that court entirely concurred) for not acting upon the recommendation of the honourable Court, that the duty of superintending the administration of civil and criminal justice should be assigned to the several Commissioners of Revenue and Circuit, appear to me to be quite conclusive.

5. At the same time it would seem certain that the object, the means of attaining which were discussed in the honourable Court's letter, is still a desideratum of the first importance, and there can be as little question of the soundness of the opinion in regard to the agency at present employed to that end, expressed in the passage quoted on the margin from that despatch.* Indeed the Sudder Court themselves speak of their own ability to perform the duty in question in very qualified terms, stating only that "as far as a stationary court can exercise adequate control over the numerous and widely scattered tribunals subject to their jurisdiction, the judges are of opinion that the superintendence of the court at the present period is sufficiently effective."

6. But it is not merely the stationary character of the Sudder Court that appears to me to unfit it for the efficient performance of the duty of superintendence. There is another disqualifying element inherent in its very constitution.

7. It is a judicial tribunal; all the habits of the officers who preside in it, habits in most instances confirmed by the uniform bent of their thoughts and practice during very lengthened public service, are strictly judicial; and the legislature has constituted them the judges of all "charges and complaints of a serious nature which

* "It is not merely because those judges (of the Sudder Court) have more business to discharge than they are able to get through, and are consequently without leisure to exercise a controlling power, but because the superintendence of the internal administration of the country is a business for which a stationary and distant court is in noway adapted, that we think this duty which has hitherto been only nominally discharged, should be devolved to other authorities responsible, as well as capable, of efficiently performing it."

See Reg. XVII. of 1813, especially sect. 14.

which may be preferred against European public officers employed in the judicial department. In many of the more important cases of the like charges and complaints against native judges, they are, practically, the authority which acquits or condemns.

8. When this circumstance is combined with the disqualifications of distance and of stationary character, it is, I think, impossible to suppose that the Sudder Court, whatever the zeal, ability and experience of its judges, should be able to superintend and control with the requisite vigour and effect, the operations of a great judicial system, administered by a very numerous body of judges of different classes, spread over an enormous tract of country from Shahabad and Sarun in the north to Cuttack and Chittagong in the south, and from Ramghur in the west to the further limits of Lower Assam in the east; especially at a time when the momentous experiment of entrusting to the natives of these provinces the whole primary administration of justice to their fellow-countrymen, has very recently been allowed universal operation.

9. It is quite manifest, with reference to distance, that the principal Sudder Ameen of Sarun or Chittagong, who is now competent to adjudicate cases involving any amount of pecuniary interest, must be altogether beyond the control of the court, otherwise than as they can employ to that end the agency of the judges of the district. But if a principal Sudder Ameen so situated be dishonest, "*quis custodicet ipsas custodes?*" I will not suppose the most improbable case of fellowship in corruption, but what if the judge on whom the Sudder Court must be entirely dependent, be indifferent and supine, of an easy, unsuspicious character, or difficult of access from his habits, to timid complainants against a powerful functionary? In all such instances, it is evident that the Sudder Court must remain in ignorance of the malpractices of the officer presiding in the subordinate court, in whose integrity not only the fortunes of many, but the character of the judicial administration in the estimation of a much larger number of the community is involved, until some party, aggrieved by his corrupt decisions, be intelligent and bold enough to bring his complaint before their remote tribunal.

10. A single case in point will go further to enforce this position than any abstract arguments. On the 30th of March 1832, the late Mr. Dashwood, the Judge of Tirhoot, proposed as a part of the arrangements for carrying Regulation V. of 1831 into effect (that Mirza Abdoolla Beg) at that time sheristadar of his Court (and Bukhshish Ali) then Sudder Ameen, should severally be appointed principal Sudder Ameen, and Sudder Ameen of that district. This arrangement, which was backed as usual by the Commissioner of the division, was sanctioned by Government on the 21st of August of the same year.

11. These persons remained in office so long as Mr. Dashwood retained the judgeship of Tirhoot. On the 19th May 1836, that gentleman made over charge of that office, and shortly afterwards died. On the 9th of September following, the officiating Commissioner (Mr. Harry Nisbet), in concurrence with the officiating Judge (Mr. Gough), submitted charges against the principal Sudder Ameen, Abdoola Beg, on which it had been deemed necessary to suspend him from that high situation. In this communication, Mr. Nisbet justly designated the correspondence which he forwarded as "exhibiting in a flagitious light the character of Abdoola Beg," which Mr. Gough stated to be one of "notorious corruption." On Mr. Nisbet's final report of the 8th of November 1836, from which the paras. quoted on the margin* are extracts, the principal Sudder Ameen was dismissed from the public service by Lord Auckland, as unworthy "of further confidence as a judicial officer;" yet he filed in his defence the following certificate, given to him

* "Added to the unsatisfactory defence made by the principal Sudder Ameen, is the general disrepute in which he is held, and the prevalent belief of his unlimited dealing in bribes. This I have found to be the opinion prevalent, both among the European public officers, and also private individuals of the native community, as well at remote stations as in the district where the accused has held office; and the contrast betwixt his character and that of the other native judge of the same grade at the station of Mozufferpoor, is proclaimed by every native, and frequently alluded to in the course of this inquiry. The name of the individual who appears to such advantage in the comparison with this man is Moubouree Abdool Wahad Khan, the additional Principal Sudder Ameen. His uprightness of character, and correct mode of conducting his official duties, have gained him the respect of every one.

"It appears that Abdoola Beg's character and regularity of conduct are not now for the first time called in question. His violation, both of rule and justice, in a case which he tried about a year ago, was brought to the notice of the Court of Sudder Dewanee Adawlut, and he then appeared to have acted so reprehensible, that the officiating judge of the court, Mr. D. C. Smyth, recommended his suspension. From a want of concurrence, however, in the judge who reviewed the case after Mr. Smyth, the suspension did not take effect."

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him by Mr. Dashwood, under date the 2d of June 1836, some days after that gentleman had quitted his office:—

"Mirza Abdoola Beg has been in the employ of Government for a great many years, and was first with me for some years as sheristadar of the Civil Court, and on the issue of the new Regulation, I promoted him to be the principal Sudder Ameen, in which situation he now is, and is a very able man, and has acquitted himself to my entire satisfaction. (signed) *T. J. Dashwood.*"

12. The case of the Sudder Ameen, Bukhshish Ali, is as follows: Among the papers submitted with the first charges against the principal Sudder Ameen, was a letter from Mr. Gough, the officiating judge to the Sudder Court, dated the 26th July 1836, containing the following paragraph:—

"Though not directly required in your letter under acknowledgment, I still consider it my duty to bring to the notice of the Court the unfavourable opinion, I believe I may say, universally entertained of the Sudder Ameen, Bukhshish Ullee, not only in regard to his capacity as a judicial officer, but I am sorry to add, in regard to his integrity also. I am not prepared at this moment to bring up any case in point, but I consider myself called upon, particularly in reference to the concluding paragraph of Mr. Secretary Macsween's letter of the 20th May 1833, to bring to the notice of the Court the sense of the community, so far as I have been able to ascertain it, in regard to the character and conduct of Bukhshish Ullee."

13. Upon reading this paragraph, his Lordship the Governor of Bengal requested the Sudder Court to inform him whether they had "directed any measures of investigation to be taken in consequence of the very serious allegations adduced by the acting Judge against the official character of Bukhshish Ali.

14. The reply of the Sudder Court, and Mr. Secretary Mangles' rejoinder, are subjoined:—

"To Mr. Secretary Mangles.

"Sir,

"I AM directed by the Court to acknowledge the receipt of your letter of the 20th ultimo, No. 1683, requesting the Court to report whether they have directed any measures of investigation to be taken in consequence of the very serious allegations adduced by Mr. Gough, officiating Judge of Tirhoot, in his letter to my address, dated the 26th July last, against the official character of Bukhshish Ali, the Sudder Ameen of Tirhoot.

"2. In reply, I am directed to observe, that as Mr. Gough was only in temporary charge of the office of judge of the district, in his remarks regarding Bukhshish Ali, containing no specific details of the grounds on which his unfavourable opinion regarding that officer were founded, the Court, on the 26th August, addressed a letter (copy of which is annexed) to Mr. Oldfield, the judge of the district, calling his particular attention to the subject of Mr. Gough's letter, and requesting him to submit a special report thereon on the expiration of the current year.

"I am, &c.

(signed) "*J. F. M. Reid,* Register."

"Fort William, 14 October, 1836."

"To the Register of the Court of Sudder Dewanny Adawlut.

"Sir,

"I AM directed to acknowledge the receipt of your letter, No. 2436, dated the 14th instant, with its enclosure, relative to the Bukhshish Ali, the Sudder Ameen of Tirhoot, and to request that you will inform the Court, in reply, that with reference to the nature of the allegations conveyed by para. 8 of Mr. Gough's letter of the 26th of July last (that officer stating that an unfavourable opinion of the Sudder Ameen's integrity is universally entertained), and to the importance which he attaches to the principle, that it is the duty of the Government not only to maintain the purity of the judicial administration, but to obviate as far as possible all suspicion that it is not pure; and that the superior authorities are indifferent with respect to the estimation in which the judges of the subordinate courts are held by the people, the Right honourable the Governor of Bengal considers it desirable that Mr. Oldfield should be directed to enter instantly in communication with the officiating Commissioner, upon the investigations necessary to satisfy

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himself and his Lordship, whether the suspicions under which Bukhshish Ali is represented to lie, be or be not well founded.

"2. His Lordship deems it a matter of regret that so much time should have been allowed to elapse since the receipt by the Court of the officiating judge's letter above cited, without the institution of inquiries of the nature above mentioned, which appear the more indispensable, because there is too much reason to fear, from the concurrent report of Messrs. H. Nisbet and Gough upon the conduct of Abdoola Beg, the first principal Sudder Ameen of Tirhoot, that the character of the judicial administration must already have been mischievously lowered in the estimation of the people of that district.

"I am, &c.

(signed) "*R. D. Mangles,*
"Secretary to the Government of Bengal."

"Fort William, 25 October 1836."

15. The investigation resulted in Bukhshish Ali's dismissal from his situation, as "unworthy of further confidence as a judicial officer." The passages quoted in the margin* are transcribed from the correspondence of Messrs. Gough, Harding and Oldfield, submitted to Government under cover of Mr. Commissioner Harding's final report of the 30th December 1836, which concludes in the following terms:—

"From a long residence in this part of the country, I have had opportunities of ascertaining the public impression regarding the fitness of Bukhshish Ullee to hold his present appointment, and the astonishment is, that he has been allowed to retain it for so long a period.

"In conclusion, I beg to add my opinion to that of the Judge of Tirhoot, that Bukhshish Ullee has shown himself to be undeserving of holding the important situation of Sudder Ameen, and should be removed from the employ of Government."

16. Yet it appears from a petition which this man filed in his defence, that he also, though he had been publicly beaten in the bazar for refusing to refund the wages of corruption, held a certificate of good character, granted to him by Mr. Dashwood.

17. That gentleman's integrity is above all question. He enjoyed also personally, a high reputation as a judicial officer; for he was one of the sixth zillah judges, first recommended by the Sudder Court to be raised to the higher grade of that class; but he was a person of an easy, kind, unsuspicious temperament, and the consequence was that the Sudder Court, who could only see and hear through him, were kept for several years in ignorance of the scandalous misconduct and unfitness for office of two native officers, exercising very extensive primary jurisdiction, and being regarded in some degree as a check upon the subordinate tribunals. Yet Mr. Harry Nisbet vouches for "the general disrepute" of the principal Sudder Ameen, and for the "prevalent belief," both among Europeans and natives,

* "From all that I have heard I certainly have reason to believe that Bukhshish Ullee is a person but very ill qualified for the responsible situation he holds, as I have universally heard his character and conduct represented as corrupt and incapable."—Extract from Mr. Gough's letter.

"On occasions of my visiting the sudder stations in this division, I have considered it my duty to make general inquiry from respectable natives of all grades regarding the official conduct of Moonsiffs and Sudder Ameens, and I beg leave, before transmitting your letter to the Sudder Dewanny Adawlut, to bring to your notice a disgraceful occurrence in which Bukhshish Ullee forfeited, in the eyes of the natives, all claim to respectability. It is a matter of public notoriety that about two years since, Bukhshish Ullee in returning home from Cutcherry was assaulted in the Bazar by a dissatisfied party in a civil suit, who demanded a refund of money given, and as I never heard of his taking any measures to clear his character from this imputation, or seek any redress for the insult offered him, I shall feel obliged by your making some inquiry, now that the character of this individual is under discussion, in order to ascertain the correctness or otherwise of the above report, and if he cannot satisfactorily explain the affair, I do not think he is a fit person to have charge of the important duties of Sudder Ameen, either in Tirhoot or elsewhere."—Extract from Mr. Commissioner Harding's letter.

"Since the receipt of your letter I have entered into the case which occurred in the late Mr. Dashwood's time, and which was certainly very notorious both among the European and native population. You will perceive that Bukhshish Alli has since denied the whole circumstance, which denial I consider so directly at variance with the notorious fact, and such a deliberate and bold falsehood, that I no longer hesitate a moment in withdrawing the mild recommendation conveyed in my letter to the Register of the Presidency, Sudder Dewanny Adawlut, and I now most unequivocally declare that I consider Bukhshish Alli convicted of a deliberate wilful falsehood, and therefore, on this ground alone, utterly unworthy to retain his present situation."—Extract from Mr. Oldfield's letter.

natives, and both within and without the district to which he was immediately attached, " of his unlimited dealing in bribes," and Mr. Gough calls his " corruption notorious." In regard to the Sudder Ameen, Mr. Commissioner Harding expresses the general " astonishment " that he had been allowed to retain office for so long a period.

18. Such things cannot be (and it is impossible that this should be, or should remain an insulated case, though it cannot probably be matched for grossness), without grievously lowering the character of the judicial administration, and of the Government which appears to tolerate such abuses, in the eyes of the people. For they cannot believe that what is so open and palpable to them, and not to them only, but to European residents unconnected with the public service, and even to the authorities in neighbouring districts, who happen to be more quick-sighted than the presiding functionary upon whom they are immediately dependent for protection, is really unknown to the Supreme Court and to the Executive Government. The result, therefore, of the distance and stationary character of the superintending and controlling authority, is not merely that particular corruption is allowed, whenever circumstances favour its development, to flourish with long impunity; but that doubts, to say the least, of the general purity of the administration, are generated in the minds of the community. Even the most candid of that body must necessarily impute to the Government a great want both of penetration and vigour.

19. I proceed to state the grounds upon which it appears to me that the judicial character of the Sudder Court, and the strictly judicial habits of its judges, disqualify them for exercising efficiently the important functions of superintendence.

20. It must be obvious, I think, on consideration, that the situation in which the judges of the Sudder Court are placed by their double obligations is highly anomalous. It is quite impossible, indeed, that any individual or body should discharge both functions efficiently. As superintendents of the administration of civil and criminal justice, they are bound to exercise the strictest surveillance, short of exciting a feeling on the part of the judges of the subordinate courts that they are distrusted; to ascertain by extensive inquiry the truth or falsehood of all reports of official misfeasance generally circulated and believed, as those, for example, alluded to by Mr. Commissioner Harding in the case of the Sudder Ameen, Bukhshish Ali; to avail themselves, for the attainment of these objects, of every source of information, the public newspapers and even the representations of those who may be actuated, in disclosing the truth, by unworthy motives; and where they unhappily find that reports are *primâ facie* well-founded, to take the most prompt and energetic steps to collect evidence and to bring the suspected officer to trial.

21. As judges, it is equally their duty to maintain the strictest neutrality; to abstain from even an appearance of taking part against a functionary liable to be brought before them for trial; to close their eyes and ears against all extra-forensic information calculated to prepossess their minds; to wait until formal charges of official malversation are advanced by some party willing to render himself responsible for their truth, and to decide upon all such charges simply upon the evidence laid before them.

22. It seems to me that it will be evident, even from this very brief and imperfect representation of the conflicting duties of the two offices, that those duties are absolutely incompatible. In practice either the zeal and energy of the superindent must infringe upon the impartiality of the judge; or, the solemn obligation upon the judge to keep his mind free from bias, and to restrain even a strong suspicion of criminality until it be substantiated by conclusive evidence, must render the superintendence altogether ineffective.

23. To establish this position, it will be sufficient, I think, to instance the gross and scandalous irregularities and abuses which obtained in the Calcutta Court of Appeals; a court so situated as to be immediately under the eye of the Sudder Court, and in regard to which, therefore, there could be no obstacle to efficient control on the score of distance, during the weeks or months immediately preceding its dissolution.

24. The first intimation which reached the Government of the abuses above referred to, was received, not from the superintending authority, the Sudder Court, but from the Sudder Board of Revenue, who, in their capacity of Superintendent and Remembrancer of legal affairs, deemed it incumbent on them to report

Report, dated 15 April 1834.

report the "extraordinary and illegal proceedings on the part of the late Calcutta Provincial Court," which had been brought to their notice in connexion with certain law-suits which they were managing on behalf of the minor Rajah of Jessore.

25. It is not necessary to say more of the proceedings reported by the Board, than that they fully warranted the terms in which they spoke of them. It is sufficient for my argument to state that the second member (Mr. W. W. Bird) expressed his trust "that he should not be considered as going beyond the strict line of his duty, in recommending the appointment of an immediate inquirer into these transactions, and the nomination of a special officer for the purpose. It is true (he added) that the proceedings immediately under consideration, in which the Board are more particularly concerned as guardians of the minor Rajah, can be rectified by an appeal to the Court of Sudder Dewanny Adawlut, but it is notorious that proceedings equally irregular and unauthorized have taken place in numerous other cases; and as all this has been shamelessly done, under the very eyes of the Government, and in the face of the highest judicial and revenue authorities, he (Mr. Bird) thinks that the most thorough investigation is urgently required to do away the reproach which has been thereby cast upon the public administration."

26. Mr. Pottle did not concur in his colleague's suggestion, though he, too, had "heard that similarly irregular and unauthorized proceedings of the Calcutta Provincial Court had taken place in other cases," because, "the privileges of such a recommendation appeared to him properly to belong to the Sudder Dewanny Adawlut."

21 April.

27. A copy of the Board's report was forwarded to the Sudder Court, with the remark quoted in the margin.* To this the Court replied in the following terms:—

"On the receipt of the above communication (the letter of Government dated 21st April), the court called on Mr. C. J. Middleton, and also upon Mr. C. R. Martin, for explanations; copies of which I am directed to forward, together with an abstract statement drawn up by the direction of the court, of cases in which Mr. C. J. Middleton has passed inconsistent or illegal orders, and of the notice taken of them at different times by the court. Those in which final orders have been passed, do not, in the opinion of the court, call for any special inquiry. The four first-mentioned cases it will be seen (as well as those referred to in the letter of the secretary to the Sudder Board), have not yet been finally disposed of; and the court cannot, at the present stage oft he proceedings, determine whether they afford any grounds for the appointment of a commission of the nature contemplated by your letter or not."

28. In reply to this letter, the Government pointed out that it was "a very important part of the duty of the Judges of the Sudder Court to control the proceedings of the subordinate courts; to take effectual measures to satisfy themselves that the judges of the subordinate courts do their duty according to the established laws and practice; to correct irregularity; to require explanations, and to bring to the notice of Government all instances in which the judges of the subordinate courts may persist in an irregular course, whether from unfitness or other causes, more particularly when repeated instances of great irregularity may be brought to their notice." It was added, that, "the Vice-president in Council could not avoid expressing his surprise that the court should not have taken more particular notice of Mr. Middleton's proceedings."

29. The court's reply is transcribed in the margin,† and I would request particular

* "The court will doubtless adopt such measures, and enable them to ascertain how far the officers of the late Calcutta Court of Appeal, covenanted or uncovenanted, have been implicated by neglect or otherwise in these alleged irregularities; or to determine whether it will be necessary for the court to suggest to Government any measures for a more full inquiry by officers specially appointed. The Vice-president in Council concludes that Mr. C. Middleton will be called on to explain the contradictory decrees which appear in his name, and requests that his explanation may be submitted for the information of the Government."

† "From the concluding passage of the second para. of your letter, the court observe with regret that his Honour the Vice-president in Council appears to be of opinion that they ought to have brought these irregularities in Mr. Middleton's proceedings to the notice of Government at an earlier period. In explanation of their not having done so, the court remarked that they were brought to the notice of the judges separately, and at different periods, and the distinct cases not considered by any judge individually of such importance as to demand a reference to Government, more especially as in those disposed of, the law provided a remedy for their correction. It was not until the court took up the matter collectively, and called for the general statement of cases in which inconsistent and irregular orders by Mr. Middleton had been brought before the court, which accompanied my letter of the 30th ultimo, that they were found to have been of such frequent occurrence. They are sorry to add, three other cases of a similar character have since come to the knowledge of the court, which have not yet been finally disposed of; a further statement of which, however, will be immediately submitted, should Government desire it."

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particular attention to it, in contrast with the passages above quoted from the report of the Sudder Board of Revenue, which first brought the irregular and illegal proceedings of the Provincial Court to the knowledge of Government, because I think that it demonstrates, by a practical illustration more forcible than any general arguments, the utter incompatibility of the two most important functions which the Judges of the Sudder Court are now required to fulfil. It will be observed, that the superintendents and comptrollers of the judicial administration wrote as if they knew, and would know, nothing of abuses so gross as abundantly to justify the strong terms in which the Board had spoken of them, abuses with which all Calcutta was then ringing, but from what came before them as individual judges of appeal. They did not even allude to the reports then so generally prevalent to the great reproach, as Mr. Bird truly remarked, of the public administration, of which, as affecting a high judicial tribunal, the public had a clear right to demand that the truth or falsehood should be unequivocally demonstrated by a most searching and jealous investigation, and in regard to which, or rather to the unquestionable facts on which they rested, the court themselves (as I shall show in the sequel) were by no means satisfied with the result of their first measures; and as judges of the court of the last resort, by whom not only the cases in which the abuses in question had been practised, but the question who was and who was not implicated, and to what degree, in those abuses, must, as they knew, be eventually decided, I cannot think that they deserve blame for their extreme caution and forbearance. They were bound, indeed, as judges, to exercise those qualities; but that obligation altogether unfitted them, in the instance under remark (as it must unfit them in all similar cases), for the efficient discharge of the duty of superintendence, upon which the vigour and purity of the whole judicial administration is vitally dependent.

30. Mr. C. J. Middleton was suspended pending the Sudder Court's investigation of the irregularities of which he had been guilty, an investigation conducted exclusively as judges by the examination of the cases decided by that officer were brought before them in appeal, which resulted in his restoration to office on the exculpatory report of the court, after a severe censure from Government, on the 13th October 1834.

31. But the matter did not end here, for on the 26th of March 1835, nearly a year subsequent to the date of the Sudder Board's first representation upon the subject, the Sudder Court, in reporting upon the petition of a party who had complained to the Governor of Bengal of certain highly irregular proceedings on the part of Mr. C. J. Middleton, stated that the majority of the judges were of opinion, "that an inquiry of the nature indicated in the seventh paragraph of the letter from the secretary to the Board of Revenue, dated the 15th of April 1834, should immediately be set on foot."

See para. 25 of this Note.

32. This recommendation the Court subsequently recalled; but it is impossible to read the papers connected with the case without feeling that the interests of the public service, and the reputation of the judicial administration in particular, would have been most essentially furthered by the institution, in April 1834, "of the thorough investigation" then suggested to Government by Mr. Bird.* But to render such investigations effective, and such as the public will believe to be made in earnest, they should manifestly be conducted by an officer who neither is, nor is liable to become a judge in the case. They ought to be entrusted to a functionary who is really and only responsible for the purity of the administration of justice.

3d April 1835.

33. I quote on the margin† the paragraphs in which Sir Charles Metcalfe and the

* When reports of mal-administration or corruption in any court of justice are generally prevalent, as was the case in regard to the Calcutta Provincial Court at the period alluded to, it seems to me to be just and necessary that the groundlessness of such reports, if they be unfounded, should be proved, as that their truth, if they be true, should be established, by the conviction of the guilty parties. But I will venture to affirm that there is not a single person, native or European, who in 1834-35 thought the Calcutta Provincial Court corrupt, who does not think so.

† "In conclusion, I cannot but repeat the expression of my extreme regret that I should be compelled, in the performance of my duty, to lay before your honourable Court a series of correspondence, disclosing facts which must have thrown extreme discredit upon our general institutions in the estimation of the people for whose use and benefit they are maintained. It is lamentable to reflect, that the court in which these discreditable transactions took place is situated within three miles of the Court of Sudder Dewanny Adawlut, and of the seat of Government. I am happy in the belief, however, that the superior court have afforded redress in every case of wrong to the parties aggrieved by the audacious frauds described in the foregoing paragraphs of this letter; I trust that the punishment with which the principal criminal has been visited will deter other native officers from committing the like offences; which apparently nothing but the most culpable laxity

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the Honourable Court of Directors, after severally reviewing at considerable length the facts of the case, expressed their respective opinions upon the conduct of Mr. C. J. Middleton. It is very clear, that whatever share of the onus may fairly be laid upon that gentleman's head native officer, the "principal criminal" alluded to by the Governor of Bengal, the malpractices justly lamented as reflecting such extreme discredit upon the judicial administration and the Government, could never have attained to the flagrant height at which the papers of the case exhibit them, otherwise than from the entire default, under the existing system, of any efficient superintendence. The truth is, that the abuses obtaining in the Calcutta Provincial Court, were known to and were a common topic of conversation among hundreds of individuals official and unofficial in this city, the Sudder Board, and probably the Judges of the Sudder Court themselves, as private individuals, long before they could as judges permit themselves to be cognizant of them. When they became officially acquainted with them, they could not, as judges, follow them up as a superintendent unhampered by judicial habits and obligations would have done; and thus, I feel persuaded it must always be, as long as the inconsistent duties of inquiry, prosecution and adjudication are imposed upon the Sudder Court.

34. I will only instance, and that very briefly, one other case, that of Mr. C. R. Martin, late Judge of zillah Hooghly.* The highly irregular and oppressive acts towards the moonsiffs of the district and the subordinate officers of his court, of which that functionary has been convicted, and an account of which, and of his employing the servants of Government in his private concerns, and giving public situations to his private servants, it was found necessary to deprive him of his judgeship, and to place him out of employ, were not brought to the knowledge of Government by the Sudder Court, the constituted superintendents of the judicial administration, but by Mr. Lewis, then Commissioner of the division to which Hooghly, was attached, to whom, in consequence, the thanks of the Government of Bengal were communicated through the Sudder Court, in the terms quoted in the margin.† But neither the Government nor the community ought to be left to depend in this manner upon the fortuitous public spirit of officers irresponsible for the purity and correct conduct of the bench; whilst, on the other hand, it is impossible to predicate for what length of time the grievous oppression and other abuses proved to have been practised in zillah Hooghly, might have flourished without check, if the Commissioner had not interposed, and had left the vindication of the claims of justice and humanity to the legitimate superintendents of the system, the Sudder Court, who, hampered by their obligations as judges, would certainly not have considered themselves at liberty to institute any inquiries, however loud the reports of mal-administration, until one of the parties

laxity of practice and blind confidence on the part of the judge could have rendered practicable, and that your Goverment will never again be placed under the most painful necessity of reporting to your honourable Court such humiliating events. It is understood that Mr. C. J. Middleton does not intend to return to your service, which renders any further comments on his conduct unnecessary."—Despatch from Governor-general of Bengal to the Court of Directors, dated 23d May 1835, No. 4.

"Putting aside all other instances of irregularity for which Mr. Middleton is answerable, and confining our view to the case investigated by Mr. Robertson and Mr. Smyth, and to that relating to the deposit of 8,400 rupees, both of which came under his consideration within the space of little more than a fortnight, viz., one on the 24th September, and the other on the 8th October 1833, we are compelled to state that his proceedings in those cases, in connexion with each other and with the subsequent opportunities of practising similar acts of fraud which he afforded to his native servants up to the abolition of the Provincial Court on the 31st December 1833, have been such as, in the event of his applying for permission to return to our service, will make it a matter for our serious consideration, what course it will be our duty to take."

* It is very remarkable that Mr. C. R. Martin was a Judge of the Calcutta Provincial Court up to the date of its being closed. "On the 14th of July 1834, an anonymous petition, purporting to be from certain ryots of the twenty-four Pergunnahs, accusing Mr. Martin of corruption through the agency of one Rammohun Sircar, was sent by Government to the Sudder Court for such further notice or inquiry as they might consider necessary." The judges were divided in opinion whether even any inquiry could be made upon an anonymous representation, but Mr. Martin requested a copy of the petition, and volunteered an explanation, which was considered quite satisfactory, without any further investigation whatever. But the name of the same Rammohun Sircar was mentioned in connexion with that of Mr. Martin during the Hooghly investigation in 1837, under circumstances naturally leading to a strong suspicion that he was employed by that officer as an agent for bad purposes.

† "The important service performed on this occasion by the late Commissioner of the 14 division, also deserves to be noticed with approbation. To the courage and energy of Mr. Lewis, and his prompt and judicious proceedings, it is owing that Mr. Martin was checked in his course of injustice and oppression, and that the Government has been relieved from the stigma, and the people from the infliction involved in the tenure of high judicial functions by such an officer."

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ties aggrieved had been bold enough to file a formal complaint against his powerful oppressor.

35. Since the foregoing sentence was written, I have ascertained that the case is even far stronger in favour of my views than I have put it. One of the aggrieved moonsiffs did lodge a formal complaint, but the court refused to entertain it, because a charge of corruption had been brought against the complainant, and the case was still pending. Now the very essence of the moonsiff's complaint was, that the judge had got up this charge against him, and would not dispose of it. The sole result of his coming down to Calcutta to complain to the Sudder Court, was that the instant he returned to the district of Hooghly, the judge had been arrested for absenting himself from attendance on his court. How is it possible that the innocent can be effectively protected, or the guilty brought to punishment, by such a system?

36. I do not think that any measure short of relieving the Sudder Court from all executive duties connected with the superintendence and control of the administration of civil and criminal justice, and of entrusting those functions to an executive officer, unembarrassed by any purely judicial obligations, and able to visit from time to time the several districts under his jurisdiction, will suffice either to meet the views of the honourable Court of Directors, as expressed in their despatch of the 7th October 1835, or to supply the defects and correct the evils of the existing system as very imperfectly exhibited in this note.* It may be added, that the recent extension of the powers of adjudication entrusted to the subordinate mofussil courts, and the greater resort of Europeans to the interior, where they will certainly settle in annually increasing numbers, combine to add cogency to the necessity of losing no time in rendering the superintendence and control of the system really effective. This consideration is nowise affected by the prospect of any changes of that system which may be expected to result from the labours of the Law Commissioners; for under whatever forms justice may be dispensed, it is equally essential, especially in a country where there is at present unhappily no public, and where, therefore, the Government must do every thing for a community which will do nothing for itself, that the practical responsibility of those who administer it should be vigorously enforced and maintained.

37. The executive superintendent should be taken from the same rank of the public service as the temporary judges of the Sudder Court (such high standing on his part being necessary to the cheerful subordination of the zillah judges, as well as to the experience requisite for the efficient discharge of his functions), and his salary should be on an equal footing, with an additional travelling allowance. For it appears to me to be essential to the success of the proposed scheme of administration, as the converse is one of the causes fatal to the present system, that the superintendent should frequently visit the districts under his jurisdiction. This obligation suggests the importance of carefully selecting for the new appointment an officer of personal activity and energy; and shows also, why it would not be practicable for the local government to exercise itself the functions of superintendence through the instrumentality of the judicial secretary. I am aware that some valuable time is necessarily lost upon such tours of inspection as I have recommended; but they afford the opportunity of acquiring the most important information regarding the conduct and habits of the several judicial functionaries, the estimation in which they are held by the people, and the like, which the most intelligent superiors, remaining fixed in a court sitting at a distance, in some cases of several hundred miles, cannot possibly obtain.

38. To the superintendent, all returns of civil and criminal business should be made; he should also, on the recommendation of the zillah judges, appoint moonsiffs, and nominate for Sudder Ameenships, and, conjointly with the Sudder Court, for principal Sudder Ameenships; he should furnish annual reports upon the administration of civil and criminal justice, embracing all branches of those subjects which may be generally classed under the heads of efficiency in the despatch of business and local character. The Sudder Court should be purely a tribunal of civil appeal in the last resort, and the supreme criminal court. It should report annually upon the quality of the work done by the civil and criminal judges

* For the sake of perspicuity, I have treated the subject as if there were only the one Sudder Court, with the operations of which I am familiar. I apprehend, however, that all the arguments of this note, founded upon general principles, are quite as applicable to the Sudder Court at Allahabad as to that of Calcutta.

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judges of all grades which has come under its cognizance; combaining both returns, the information of Government would be complete.

39. I can anticipate but three objections to the plan which I have proposed, and I shall briefly state and answer them.

First. It may be objected, that the plan involves a great change of system, and that the addition of another to the many changes of system which have of late years, especially, characterized the Indian administration, is to be deprecated.

Secondly. It may be objected, that the proposal to make such a change implies a suspicion, for which no grounds exist, of the general purity of the administration of justice in the courts of the interior; and that the dissatisfaction which the impression of being distrusted would excite in the minds of the great body of judicial functionaries, would more than counterbalance any benefit which could be expected to accrue from a more efficient system of superintendence and control.

Thirdly. It may be objected that the proposed creation of a new and highly remunerative office will entail an expense upon the Government, for which the contemplated benefits will not afford sufficient compensation.

40. I think that the first objection is answered by the proof which I have adduced from the records of Government, of the utter inefficiency of the existing system to meet even existing demands upon its watchfulness and vigour. But those demands are in constant and rapid progression. Every additional European settler in the mofussil, every improvement or enlargement in the education of the natives, indeed every fresh generation which enters into active life from the schools and colleges already in operation, and every measure tending to place British-born subjects on the same footing with the natives in the mofussil courts, will render stronger and more urgent the obligation upon the Government to provide effective instrumentality for the superintendence and control of its judicial tribunals. Is the constitution of the Sudder Court such, is the experience of its past agency to those ends so favourable, as to warrant a reasonable expectation that it will be able to keep pace in increasing efficiency with the certain increase of demand for all the higher executive and administrative qualities? It seems to me impossible to answer this question otherwise than in the negative, and if so, the objection falls to the ground.

41. The consideration stated in the foregoing paragraph appears to me to involve to a considerable extent an answer to the second supposed objection. If there be an urgent necessity for the proposed change of system, it not only follows that minor evils which such a change may occasion must be hazarded, but that it would not be difficult to demonstrate that necessity to the satisfaction of all reasonable men, whose feelings might otherwise be hurt by misapprehension in regard to the motives of those making the change. I believe, however, that those motives will in general be correctly appreciated, and that the most intelligent of the judicial officers in the mofussil will be the foremost to admit that very beneficial consequences are likely to result from a change of system which, whilst it will ensure the detection and punishment of the few who may at any time disgrace or neglect their high functions, will ensure the immediate cognizance by the Government itself, the fountain of honour and reward, of the meritorious services of those who faithfully and zealously discharge their obligations to the state and the community, and will at the same time unquestionably tend to increase the usefulness, and to raise the character of the judicial administration. But in truth, there would seem to be no reason why the appointment of a superintendent of the administration of civil and criminal justice should be more offensive to the different classes of judges than that of a superintendent of police was or is to the magistrates. There has always been ostensible superintendence and control; all that is proposed is to render them practically effective.

42. The third objection is easily met, because I have no doubt that the measure proposed would enable the Government to dispense with at least one of the additional judges, now found indispensable to the efficiency of the Sudder Court, and to keep the number of judges upon the bench of that Court fewer by at least one, in all future time, than would otherwise be feasible. It will not, I apprehend, be questioned by those who know any thing of the working of the present system, that the Sudder Court, as a body, give more than the whole time of a single judge to the business, which would be transferred under the proposed scheme from their hands to those of the superintendent; and much of that business upon which the Court now sits collectively is of such a nature, that it could be better done

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done by an individual; and it cannot be doubted, that if relieved from the labour and responsibility of superintending a great and yearly increasing judicial system, the court would be able to proceed greatly more rapidly than it has hitherto done in its proper work of adjudication.

43. It only occurs to me to add, that it might be deemed worthy of inquiry, if the general views submitted in this note be honoured by the approval of Government, whether the superintendence of the administration of civil and criminal justice, united with that of the police, would be too much for the energies of an individual officer, and that the proposed relief of the Sudder Court would leave its register at liberty to devote some of his time and attention to the improvement and acceleration of the present system of reporting important adjudged cases, precedents, rules of practice, and the like, the value of which (to say nothing of their existing only in the English language) is much depreciated by the want of proper arrangement, and of sufficient indexes.

44. Finally, I solicit the indulgence of the honourable Board for the frankness with which I have stated my opinions in this note. The confidence of candid construction and patient consideration, which naturally leads to frankness of expression, is of their own creation, for it has been generated by long experience of the anxious desire of the Government to render every branch of the administration in the highest possible degree effective, and of their consequent readiness to receive and attend to the suggestions of the humblest functionary, directed in good faith to that, and being therefore certain of my motives, and being convinced, by long reflection upon the subject, of the extent of the existing evils, of their certain tendency (from the increasing disproportion between the means of operation and the work to be done) to grow greater, and of the feasibility of improving the system, I have ventured to state plainly what I feel strongly. The real interest of the public servants of Government, which the proposed measure would place upon a basis as broad as perhaps can for the present at least be formed in this country, are no less at stake than those of the community. I have performed my part in submitting the matter for the consideration of the high authority which alone can dispose of it.

(signed) *Ross D. Mangles,*
Officiating Secretary.

13 June 1838.

Despatch from the Honourable the Court of Directors to the Government of Bengal; dated 7 October 1835.

Legis. Cons. 20 Aug. 1838. No. 2. Enclosure.

(Judicial Department. No. 5 of 1835.)

Our Governor of the Presidency of Fort William in Bengal.

Letter dated 24 Sept. 1833 (paras. 19 to 31), annual tour of the judges of the Courts of Sudder Dewanny Adawlut and Nizamut Adawlut.

Para. 1. We find that the proposition made to the Governor-general, that one of the judges of each of the two Courts of Sudder Dewanny and Nizamut Adawlut should proceed on an annual tour of inspection, and visit each of the districts within the range of their jurisdiction, has received no support either from the Members of Council or from the judges of those courts. Unquestionably the great practical difficulty which of late years has had to be struggled with in your system of judicature, has been that of keeping down the constant accumulation of civil and criminal appeals brought before the Sudder Court. That difficulty would be much aggravated by the annual interruption of unfinished business consequent upon the proposed circuit. To meet this objection, and to provide for the new duty of visiting 38 stations in the Lower Provinces, as well as the Western Provinces, comprehending a distance of 2,500 miles, it may be computed that to keep them only in their present degree of efficiency an addition of three judges to each of the Sudder Courts would not be more than sufficient. The enormous expense of this augmentation is not the only reason against it, for courts of appeal in the last resort, so numerous and so fluctuating as the Sudder Courts would then be, could hardly be expected to preserve the requisite uniformity in their decisions. Considering, moreover, the usual time of life and state of health of the judges of those courts, and the personal exertion and fatigue incident to the proposed

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posed duty, frequent failures in the circuit and derangements of the scheme would be unavoidable.

2. Moreover, it is not by means of a hasty journey through the country that the proceedings of judicial officers can be accurately examined or efficiently controlled by their superiors.

3. On the other hand there is no question that the judicial and magisterial administration under your Presidency in the provinces has long required to be more closely looked into and controlled; and we are not at all surprised that the Governor-general should have called our attention to the expediency of providing a remedy for an admitted evil, though we do not sanction the adoption of the particular remedy suggested.

4. The persons to whom such an office is delegated should not indeed belong to a court whose business they would derange by their absence, and a visit to all the districts under your Presidency could not be accomplished in the time specified by only two persons.

5. The Governor-general did not however confine himself to proposing the devolution of such a duty to judges of the Sudder Court. He urged the adoption at all events eventually " of some measure of the above description."

6. It is not merely because those judges have more business to discharge than they are able to get through, and are consequently without leisure to exercise a controlling power; but because the superintendence of the internal administration of the country is a business for which a stationary and distant court is in no way adapted, that we think this duty, which has hitherto been only nominally discharged, should be devolved on other authorities, responsible as well as capable of efficiently performing it.

7. So entirely indeed are we satisfied that a real acquaintance with what is going on in the country is only to be attained by persons on the spot, that, instead of reducing the number of your Commissioners of Circuit, which, in consideration of their no longer being called upon to discharge the judicial duties originally imposed upon them, we observe was contemplated by your Vice-president in Council, we desire that you will invest those functionaries with the powers of control, inquiry and general supervision over the whole judicial and magisterial administration in their respective districts, which were proposed by your late Governor-general to be conferred upon visiting Commissioners. Time will not be wanting to them, relieved as they are from all but revenue and police functions, and they will be in command of very great facilities for the discharge of that new duty which we now direct you to require from them.

8. In the instructions which you will address to the Commissioners on investing them with this additional and most important office, you will inform them that it will be their duty to make themselves accessible to the complaints of all who may have aught to allege against any functionary acting either in the civil or criminal branch of the Judicial Department; that they will be held personally responsible for any neglects or abuses which shall not have been inquired into and corrected or reported by them to Government; and that to screen or overlook the demerits of their fellow-servants will be held by us to constitute a disqualification for any situation of trust or importance.

9. With the view of enabling your Commissioners of Circuit the more easily and deliberately to discharge the additional duties thus devolved on them, we would call your attention to the practicability of abridging the revenue functions with which the Commissioners are charged, so that they may not supersede those of the collectors of districts, and oblige those officers to have the sanction of the Commissioner to every official act performed in the ordinary routine of duty.

10. We entirely approve of the determination of Mr. Shakespear, of transferring the correspondence on the state of the police with the Commissioners of Revenue and Circuit from the Nizamut Adawlut to the Government.

11. In the half-yearly reports on the police sent in by them to the Government, they will hereafter, in their capacity of superintendents of the whole of the Judicial Department, submit such accounts as they may have to offer respecting the proceedings of the functionaries subordinate to them, the operation of the civil, criminal and police systems, the constitution and morals of the people, and should convey any suggestions they may desire to offer, with a view to promote in any way the public welfare.

12. These

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12. These reports, however, are not to be considered as superseding the necessity for special communications to Government intermediately, when circumstances may require them.

13. You will not fail to forward to us both the half-yearly and the special reports regularly, and by the first opportunity, after you have received them.

14. Nor are these reports to supersede the means of superintendence and control over all judicial officers, which consists in their rendering, with perfect accuracy, regular and complete returns of the duty performed by them. These returns should exhibit the number of days they sit in court, the number of cases filed, the number decided, the number in arrear, the number of decrees executed; in short, under proper heads, all the business of each court which has been or which remains to be performed. Entries of this nature from the several tribunals, when incorporated in a general return, will serve as a check, and be constantly open to examination.

15. The next means of superintendence and control consist in a careful examination of such of the business transacted by judicial officers as comes under the review of the appellate tribunal. The Sudder Court is not only the court of appeal in the last resort, but also a Board of superintendence over the other tribunals; and it is incumbent upon them to review the acts of those tribunals with reference to their duties in the one capacity as well as in the other. In the letter from the Secretary to the Governor-general, containing the proposal under examination, it is observed, that the members of the Sudder Adawlut "are placed in a predicament of an anomalous and difficult description. Required to see that the time of subordinate functionaries is not misemployed, and that the duties of the whole of the courts, subject to their jurisdiction, are punctually performed, they themselves are called upon to exercise similar duties of a more arduous and important nature, whereby, their own time is so incessantly occupied as to leave them but little leisure for the task of superintendence." We are of opinion that it is precisely in the exercise of their own duties, that the judges of the Sudder Adawlut are enabled and qualified to superintend with judgment and effect the manner in which the duties of the subordinate tribunals are performed. Without that peculiar advantage, their interference would be more liable to mislead than correct. But when, in the discharge of their appropriate functions, and with all the information of which the case admits, they discover error, or neglect, or incapacity, they are better enabled, as well as called upon, not only to reverse or modify what is wrong in the judicial proceeding, but, moreover, to admonish the judicial officer, to bring his conduct, if necessary, to the notice of Government, or to frame rules by which the same errors may, in future, be avoided.

16. In order to leave the judges of the Sudder Court free and unembarrassed in the exercise of their office as a superintending Board, it is necessary that the returns already mentioned should be simple in their form, and easily applicable to their subject. For the same purpose, and in the same manner, it is highly expedient that their functions, as a court of appeal, should not be carried beyond their proper boundaries. Care should be taken that the parties in a suit fairly join issue at the outset of litigation, and that it be made distinctly to appear upon what point of fact or of law an appeal is brought, so that what is, in form, an appeal may not in fact be a new trial by a different tribunal, and that the judges of the Sudder Court may not have their time consumed in performing, under disadvantages, the duties of local tribunals.

We are, &c.

(signed) *W^m Stanley Clarke.* *H^y Alexander.*
J. R. Carnac. *Jn^o Masterman.*
J. Lindsay. *Jn^o G. Ravenshaw.*
John Morris. *J. L. Lushington.*
J. Petty Muspratt. *W. Wigram.*
R^d Jenkins. *N. B. Edmonston.*
George Lyall.

London, 7 October 1835.

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LETTER from Mr. Secretary *Mangles* to Register of Sudder Court; dated 21 June 1836.

(No. 1090.)

To *J. F. M. Reid*, Esq., Register of the Court of Sudder Dewanny Adawlut.

Sir,

Judicial Department. Paras. 1 to 15.

1. I AM directed by the Right honourable the Governor of Bengal to request that you will lay before the court the accompanying extract from a despatch received under date the 7th of October last, from the honourable the Court of Directors.

2. The subject discussed by the honourable Court is one of great intrinsic importance, which is enhanced by the magnitude of the practical difficulties that oppose the establishment of an effective system of supervision and control over the administration of civil justice, in the numerous and widely scattered tribunals subject to the jurisdiction of the Sudder Court.

Para. 7.

3. The honourable Court desire that the Commissioners of Revenue and Circuit may be invested "with the powers of control, inquiry and general supervision over the whole judicial and magisterial administration in their respective districts," and they express their conviction that these functionaries will possess both ample time, and "very great facilities for the discharge of this new duty."

4. The Governor apprehends that the honourable Court have formed an erroneous estimate of the time at the command of the Commissioners. Their business in the Revenue Department has greatly increased in extent and importance during the last two or three years, and no immediate reduction of its pressure can be anticipated. On the contrary, circumstances appear to indicate a tendency in the affairs of that department to demand, progressively, more and more of the attention of the executive Government, and of every class of its subordinate agents. Already the Commissioners are confessedly overburthened, and a strong representation from the Sudder Board, urging the necessity of relieving them from as large a portion as possible of their duties of detail and routine, by the appointment of a highly competent uncovenanted assistant to each division, is, at this moment, under the consideration of Government.

5. But, besides their want of leisure for the highly responsible functions with which the honourable Court propose to invest the Commissioners, other considerations of serious, though minor, importance suggest themselves to his Lordship as objections to the scheme. Several of the Commissioners have but little judicial experience beyond what they have acquired in the exercise of magisterial powers, and several are junior in point of age and standing in the service, and, doubtless, inferior in official knowledge and aptitude, as far as the administration of civil justice is concerned to many of the class of zillah judges. In relation to these, therefore, they would necessarily be devoid of that unquestionable official superiority which may be considered almost indispensable to the satisfactory working of a system dependent upon cheerful subordination. Besides, a zillah judge is frequently called upon to adjudicate cases in which the local revenue authorities are either parties or are indirectly interested, and in which the pleadings on one side have been drawn up or revised by the Commissioner, whom the proposed plan would place simultaneously in a very anomalous relation of superiority to the court.

6. These objections to the system which the honourable Court desire to see established, have presented themselves to his Lordship; but it is of course necessary that the opinions of that high authority should be most carefully considered. The court are therefore requested to give the subjects discussed in the accompanying despatch their early and deep attention, and to report their sentiments thereon for the Governor's further deliberation.

7. The court will be pleased to state in their report, whether the returns at present made to them by the zillah judges embrace all the points noticed as essential in paragraph 14 of the honourable Court's despatch.

I am, &c.

(signed) *R. D. Mangles*,
Secretary to Government of Bengal.

Fort William, 21 June 1836.

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SUDDER COURT'S Reply to the above; dated 2 September 1836.

(No. 2035.)

To *R. D. Mangles*, Esq., Secretary to the Government of Bengal in the Judicial Department.

Sir,

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
C. R. Barwell,
T. C. Robertson,
W. Braddon, Esqrs.
Judges: N. J. Halked, and D. C. Smith, Esqrs.
Officiating Judges.

I AM directed by the Court to acknowledge the receipt of your letter, No. 1090, of the 21st June last, enclosing an extract from a despatch dated the 7th October last, from the honourable the Court of Directors, desiring that the Commissioners of Revenue may be invested with the powers of control over the whole judicial administration of the country, and requesting the opinion of the court upon this important subject.

2. The impossibility of carrying the orders of the honourable the Court of Directors into effect is so clearly and forcibly pointed out in your letter, that it is hardly necessary for the court to urge any further objections to the arrangement proposed in this respect, beyond those which have already presented themselves to the Right honourable the Governor of Bengal, in the validity of which they entirely concur.

3. The returns that are made every month by the zillah judges of this court, contain all the information alluded to by the honourable Court in the 14th paragraph of their despatch, and as far as a stationary court can exercise adequate control over the numerous and widely scattered tribunals subject to their jurisdiction, the judges are of opinion that the superintendence of this court at the present period is sufficiently effective.

4. The monthly returns undergo strict and careful revision by the court; the quantity of business performed by each subordinate officer is fully and accurately known. Orders correcting the distribution of business amongst the several classes of courts are duly issued, the instructions and admonitions of the court are conveyed without delay to the several district judges, and all such communications as are deemed necessary relative either to the conduct of individual officers, or to measures requisite for reducing the files of particular districts, are at once submitted to Government.

5. The above remarks apply generally to the quantity of work performed by the judicial officers in the interior, and I am directed by the court to observe, that the judges have constant opportunities of forming a very fair estimate of the quality of that work. The revision of the petitions of appeal, summary and regular, the receipt and examination of various references, the examination of reviews of judgment, and of other details which it is unnecessary here to specify, enable the judges of this court to form a just opinion of the capabilities and qualifications of the district judges, and it is believed that very slight shades of difference actually exist in estimating the official character of these officers.

6. The court, however, are disposed to conclude that the system of control by a stationary court, may require occasionally the aid derivable from local inquiry and observation, and that inquiries may arise to render a resort to such aid indispensable. The following course of proceeding on such occasions is submitted for the consideration of the Right honourable the Governor of Bengal, as well calculated for the attainment of the object contemplated, without subjecting Government to any thing further than a temporary additional expenditure.

7. Whenever the court may be satisfied of the necessity for exercising a direct interference, for the purpose of correcting abuses or of conducting local inquiries, they would recommend that authority be granted them to nominate, for the sanction of Government, any available officer, deemed competent to the discharge of the duty required. The precise extent of the power to be confided on such special deputations, would be regulated according to the nature of the emergency, and would in each instance be first submitted for the consideration and approval of Government, together with a copy of the instructions proposed for his guidance,

8. Deputed with a distinct and specified object in view, the duty of this officer would be clear and definite. He would act under the immediate superintendence of this court, which would probably be enabled, by the information which he would supply, to devise an effectual remedy for such evils or grievances as might be detected.

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9. A proceeding of this nature would, the Court are of opinion, be found best adapted for the removal of local errors, while it would be a pointed mode of rebuke to inertness and inefficiency, without involving in its operation those who needed no stimulus to exertion. The expense to Government would be trifling, and it would only be incurred when really and urgently called for. On a full consideration, therefore, of the subject, it appears to the court that the adoption of some plan of this nature would suffice to obviate the imperfection which may be occasionally perceptible in the present mode of superintending the administration of civil justice in the interior.

I am, &c.

Fort William, 2 September 1836. (signed) *J. F. M. Reid*, Register.

ABSTRACT.

Para. 1. ACKNOWLEDGING receipt of his letter and enclosure on the subject of investing the Commissioners of Revenue with the powers of control over the whole judicial administration of the country, and requesting the opinion of the court thereon.

2. The impossibility of carrying the orders of the honourable Court of Directors into effect is so clearly pointed out in his letter that it is hardly necessary for the Court to urge further objections.

3. The judges are of opinion that superintendence of this court over the tribunals subject to their jurisdiction is effective.

4. Stating what process the periodical returns undergo.

5. Explaining how the court are enabled to form a just opinion of the capabilities and qualifications of the district judges.

6. to 9. The court are of opinion that the system of control by a stationary court may require the aid derivable from local inquiry, and that emergencies may arise to render a resort to such aid indispensable. Submitting course of proceeding for the attainment of the object contemplated.

(signed) *J. F. M. Reid.*

REJOINDER of Mr. Secretary Mangles; dated 13 September 1836.

(No. 1651.)

To *J. F. M. Reid*, Esq., Register of the Sudder Dewanny and Nizamut Adawlut.

Sir,

Judicial Department.

I AM directed by the Right honourable the Governor of Bengal to acknowledge the receipt of your letter dated the 2d instant, and to request that you will inform the court in reply, that their sentiments in regard to the proposed employment of the Commissioners of Circuit to superintend the administration of civil justice, and to the means by which the occasional necessity for the deputation of an officer for purposes of investigation and control in that department, may most unobjectionably be provided for, will, without delay engage the attention of his Lordship, and that a plan at least for meeting cases for special emergency will be shortly submitted to the honourable Court, in reply to their despatch of the 7th of October last.

I am, &c.

Fort William, 13 September 1836. (signed) *R. D. Mangles*, Secretary to the Government of Bengal.

EXTRACT of a Despatch from the Government of Bengal to the Honourable the Court of Directors; dated 30 May 1837.

Court's Despatch, No. 5, 1835, desire that the Commissioners of Circuit be vested with powers of control, inquiry, and general supervision over the whole of the judicial and magisterial administration of their respective divisions.

Para. 4. THE accompanying papers* will explain to your honourable Court the practical difficulties that oppose the adoption of the general arrangement directed by you. I propose, however, at some early period, to take into consideration the suggestions offered by the Sudder Dewanny Adawlut, on being furnished with the

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* Civil Proceedings, 21 June 1836, No. 14; 13 Sept. 1836, Nos. 4 & 5.

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the sentiments of your honourable Court in regard to the employment of the Commissioners of Circuit to superintend the administration of civil justice, and the means by which the occasional necessity for the deputation of an officer for purposes of investigation and control in that department, may most unobjectionably be provided; a plan for meeting cases of special emergency at least will soon be submitted to your honourable Court.

MINUTE by the Honourable *A. Ross*; dated 5 July 1838.

Legis. Cons. 20 August 1838. No. 3.

IT is clearly shown in this note,* that from the incompatibility of the duties and obligations of the judges of the Sudder Court in their purely judicial capacity, with the duties imposed upon them in their executive capacity of members of a board of superintendence, the important business of supervising and controlling the conduct of the numerous civil and criminal tribunals subordinate to them, is not, and cannot be efficiently performed by them.

I think, also, that the reasons stated in the letter referred to in the fourth paragraph of Mr. Mangles' note, are decisive against this highly important business being committed to the Commissioners of Revenue, as was recommended by the honourable Court of Directors in their letter to the Governor of Bengal, dated 7th October 1835.

It is not necessary to add to what is urged in Mr. Mangles's note on the very great importance of establishing an effective supervision over the conduct of the judges and officers of the district civil and criminal courts, and in regard to the propositions submitted with a view to the accomplishment of that object, I need only record my opinion, that their adoption would be productive of much advantage, and recommend them to the favourable consideration of the Council.

The propositions to be considered are,—

First. That the Sudder Court be relieved from its executive duties as a superintending board, that it be purely a civil court of appeal, and a criminal court for the revision of trials for heinous crimes, and that it be hereafter required to furnish periodical reports only on the quality of the proceedings of the civil and criminal judges which come under its review.

Second. That a single officer of high standing in the service, and of great judicial experience, but unembarrassed by any judicial functions or obligations, and able to visit the courts of every district when occasion may require, be appointed to perform the executive duties of superintending the administration of civil and crimina justice heretofore committed to the Sudder Courts, namely, the duties of carefully examining the periodical returns of the business of the civil and criminal courts, and furnishing reports regarding the efficiency of their administration, of exercising a continual surveillance over the conduct of the judges, and of bringing to the immediate notice of Government every instance of negligence or unfitness, from whatever cause, and of official delinquency.

If the Council concur in deeming it advisable to adopt the above propositions, I would then suggest for consideration whether the executive duties specified in the second proposition might not be united with those of superintending the administration of the police, and all be effectively performed by one officer.

5 July 1838. (signed) *A. Ross.*

MINUTE by the Honourable *W. W. Bird*, Esq.; dated 11 August 1838.

Jud. Cons. 20 Aug. 1838. No. 4.

I CONCUR in the opinion expressed by Mr. Mangles in his note, and by the several high authorities therein referred to, that the agency at present employed for the superintendence and control of the general administration of civil and criminal justice but indifferently answers the object intended by it, and that the proceedings of the local judicial officers require to be more closely looked into than

* Mr. Mangles, the officiating secretary to Government of India in the Judicial Department, on the inefficiency of the agency at present employed for the superintendence of the administration of civil and criminal justice.

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than they are under the present system. The Sudder Court being stationary, inaccessible from distance to a great majority of districts, and employed principally on duties incompatible with the inquisitorial proceedings inseparable from such superintendence, is not well suited to the purpose, and the plan of deputing one of the judges on an annual tour of inspection to each district, proposed by Lord William Bentinck, has been clearly shown by the Court of Directors, in their despatch of the 7th October 1835, to be altogether unadvisable.

It is not, as the Court observe, by a hasty journey through the country, that the proceedings of judicial officers can be accurately examined, or efficiently controlled by their superiors. A real acquaintance with what is going on in the country is only to be attained by persons on the spot, invested with power of control, inquiry and general supervision over the whole judicial and magisterial administration in their respective divisions; and for this purpose I agree with the Court, that the Commissioners of Revenue and Circuit were especially qualified.

I have always regretted the reduction in the number of this class of officers. It appears to me that, relieved from the session duties, which were at first most injudiciously imposed upon them, their revenue functions abridged so as to exonerate them from details in which their interference with the proceedings of the collector is not indispensably necessary, and selected for their superiority in the qualifications required to constitute an efficient controlling officer, no position would command so many facilities as theirs, for exercising the superintendence in question.

Those who exercise this superintendence as they ought, must have their eyes and ears open, be easily accessible to all who have any thing to represent to them, and determined boldly to do their duty, without regard to personal considerations; and for the discharge of such duties the highest local authority is not only the best adapted, but the one to which the community at large would necessarily apply with the greatest confidence.

Reduced in number, however, as the Commissioners have unfortunately been, notwithstanding the recent increase to a great extent of revenue business, together with the tendency alleged to exist in the affairs of that department to demand progressively more and more of the attention of the executive Government, and of every class of its subordinate agents, and possessing, as several of the individuals placed in the office of Commissioner are stated to do, not only very little judicial experience, but being junior in point of age and standing in the service, and inferior in official knowledge and aptitude to many of the class of civil judges, it is obvious that they are already too much overburdened, and moreover are devoid of that unquestionable official superiority, which is indispensably necessary for the effective discharge of the control in question. There is therefore no alternative but the appointment of a distinct officer, as proposed by Mr. Mangles, such as the superintendent of police, in whom it is suggested by the honourable the President in Council that the control alluded to might be united with his present duties. But I am of opinion that the local Commissioners, incompetent though they are stated to be, should still be employed as subordinate agents, for the superintendent cannot possibly be in every district at once, or accessible at the same time to all their inhabitants.

This will combine inspection by the local superior authority, with the advantage of securing for the administration of civil and criminal justice that superintendence which has hitherto only been allowed for the police.

It is not, however, enough to relieve the Sudder Court from the duties of superintendence; they ought not, in my opinion, to be concerned with the prosecution, nor even with the trial of the judicial officers charged with official misconduct. It has been found, not only in the case of Mr. Charles Middleton, referred to by Mr. Mangles, but in others to which it is unnecessary here more distinctly to allude, that by the application of the principles of adjudication, which necessarily regulate the proceedings of that court, delinquency not unfrequently escapes unpunished. In fact, those principles are inapplicable to such officers. A man may, as in the case of Mr. C. Martin, be very properly acquitted on this or that particular count for want of sufficient evidence, according to the rules of court, to establish the crime laid to his charge, and yet be utterly unworthy of employment under Government in any capacity as a judicial officer.

I think, therefore, that so much of Regulation XVII., 1813, as invests the Court of Sudder Dewanny Adawlut with a general control over all Commissioners appointed for the conduct of inquiries into charges and complaints preferred against

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against European judicial officers, or as requires that such commission shall transmit its proceedings for the consideration of the Sudder Court, should be rescinded;* and that all Commissioners appointed for such purposes shall in future act immediately under the authority of Government, and shall be guided by the instructions which they may receive from that authority.

I am further of opinion that, whenever such Commissioners are appointed for the trial of public officers, the charge, together with the sentence, whether of acquittal or conviction, should, as in the case of courts-martial, be published for general information. The moral effect of such publication would, I am satisfied, be attended with the most beneficial influence in the general character and conduct of the service.

It must, I am sure, be the desire of all connected with that service, no less than of the Government, to see it rid itself of every one whose conduct has a tendency in any material degree to lower it in the eyes of the public at large, and they cannot but rejoice in the adoption of a measure calculated to produce that effect, and proclaim to the world the expulsion of those who are unworthy of belonging to it.

(signed) *W. W. Bird.*

11 August 1838.

(No. 172.)

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India, to *W. H. M'Naghten*, Esq., Secretary to the Government of India with the Governor-general; dated 20 August 1838.

Jud. Cons. 20 August 1838. No. 5.

Sir,

I AM directed to transmit to you, for the purpose of being submitted for the opinion of the Right honourable the Governor-general, copies of the papers noted in the margin regarding the expediency of relieving the judges of the Sudder Dewanny Adawlut at the Presidency from the performance of the executive duties of control and superintendence over the civil and criminal proceedings of the subordinate judicial authorities, so that their functions may be limited to duties of a purely judicial nature.

Note by Mr. Mangles, officiating Secretary, dated the 13th June 1838, with enclosure; Minute by the honourable the President in Council, 5th July 1838; Minute by the honourable W. W. Bird, Esq., 11th August 1838.

2. If the principle of this measure be approved by his Lordship, the President in Council is of opinion that it may be carried into effect at little or no additional expense, either by uniting the executive alluded to with those of superintendent of police in the same officer, or by a further reduction in the number of Sudder judges, who will be relieved by the proposed arrangement of a troublesome portion of their present business, the salary of the reduced judgeship being appropriated to the new office, which, in carrying the principle into practice, it will otherwise be necessary to create.

3. The President in Council is also of opinion, that the measure proposed by Mr. Bird, of publishing the charge and sentence in all cases where the servants of Government in the Civil Department are brought to trial under the Regulations for official misconduct, would be attended with the best effects.

I have, &c.

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India.

Fort William, 20 August 1838.

From *Ross D. Mangles*, Esq., Officiating Secretary to the Government of India in the Judicial Department, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India in the Judicial Department; dated 24 September 1838.

Sir,

CIRCUMSTANCES have recently occurred, which appear to me to be so strongly corroborative of the views taken in the note which I submitted to Government on the

Jud. Cons. 22 Oct. 1838. No. 5.

* By the provisions of Regulation VIII. 1817, the Governor-general in Council is authorized to dispense, if he thinks proper, with the interposition of the Sudder Court; but in that case the commission is not to consist of less than two persons.

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the 13th of June last, in regard to the practical incompatibility of the duties imposed, under the present system, on the Sudder Court, that I trust that I shall be pardoned for attempting to place the matter before the honourable the President in Council in the same light in which it has presented itself to me.

2. I allude to the despatch in the case of Mr. William Pringle, lately received from the honourable Court of Directors, which, as relating to the period of my intimate connexion with the Government of Bengal, I have been permitted to read.

3. The tenor of that despatch seems to me to give great additional force to the arguments by which, in the note above referred to, I endeavoured to show the expediency of entrusting to the same hands the dispensation of justice in the last resort, including in some instances the trial of grave charges against judicial functionaries, and the executive superintendence of the whole civil and criminal judicial administration, often involving, as in the case of Mr. Pringle, the preliminary investigation of the same charges, in order to ascertain and to satisfy the Government whether they ought or ought not to be followed up.

4. For their proceedings in the course of conducting such a preliminary investigation, through the instrumentality of the late Commissioner of the Patna Division, the Sudder Court have received a very severe rebuke from the authorities in England. Upon the censures of the honourable Court I have, of course, no remarks to make; it is sufficient for my purpose to observe, that they are levelled exclusively at proceedings quite distinct from the strictly judicial functions of the Court.

5. But this distinction is not generally known or understood. It has gone forth from one extremity of the country to the other, that the conduct of the judges, composing the highest tribunal for the administration of justice to the millions of these wealthiest and most rapidly improving provinces of British India, has been most gravely censured by the authorities to whom the Imperial Legislature has committed the control of the local administration; and not one in a thousand of those who hear that the court to which they have long been accustomed to look up with just respect, has been subjected to such a penalty, will comprehend that neither the censure nor the cause of it attaches the slightest imputation to the character of that court, as the dispenser of justice between man and man, or between the Government and its subjects.

6. The issue of this misunderstanding, and the constitution of the court in its double capacity, is so anomalous, that there cannot fail, under the present or like circumstances, to be almost universal misunderstanding; must be the most mischievous lowering of the weight and dignity of a court of justice, which is supposed (however erroneously) to be liable to rebukes of the nature under remark. The people will not, cannot be expected to believe, that judges subject to such censure, and known not to be protected from more serious visitations, can be independent in adjudicating cases of importance in which the ruling power has a very strong interest. They cannot possibly look up with the respect due to the highest judicial functionaries, to men whose proceedings, in one important branch of their duties, may be reprehended in the strongest language, or who may even be removed from the judgment-seat on the arrival of any given mail from England.

7. The remedy for much of this serious evil is obvious and simple. Let all the executive duties now performed by the Sudder Court be committed to an executive officer, who may be censured or removed whenever controlling authorities are dissatisfied with his conduct, without any injurious effect upon the honour and dignity, and therefore, on the usefulness of the judicial bench. As matters stand at present, it is impossible for the people to comprehend, as it is difficult (as I have reason to know) for the judges themselves always to bear in mind that the court stands in a double relation to Government; in the one case, entirely independent, adjudicating cases in which the state is concerned as indifferently as the suits of individuals; in the other, acting under its orders and control as a board of justice.

8. I cannot conclude this address without apologizing again for this apparent intrusion upon a department foreign to my present duties, and upon the supreme Government, with which I have now no immediate connexion. I can only plead in excuse, the strange anxiety which I feel for the improvement of the judicial administration, and the not discouraging reply which I received from his honour

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the President, when I submitted to him my wish to be permitted to add the arguments contained in this letter, to those urged in my note of the 13th of June last.

I have, &c.

(signed) *Ross D. Mangles,*
Late Officiating Secretary to the Government of India.

Calcutta, 24 September 1838.

Minute by the Honourable *T. C. Robertson,* Esq.; dated 3 October 1838.

Judicial Cons. 22 Oct. 1838, No. 6.
Remarks upon the late Officiating Secretary's Note, of 13 June 1838.

As a necessary preliminary to that union with the Supreme Court which must eventually take place, I have no objection to urge against any well-considered measure for relieving the Sudder Dewanny and Nizamut Adawlut from the ministerial and executive portion of their present duties.

I must not, however, be understood to advocate this transfer of those functions into other hands, upon any admission of the accuracy of the opinions recorded by the gentleman who has brought the question before us, as to the efficiency of the agency hitherto employed for the superintendence and control of the general administration of civil and criminal justice.

Still less would I be understood to admit that such general superintendence can only be efficient when carried into effect by what Mr. Bird, in his Minute, happily designates "inquisitorial proceedings."

In proof of his position, Mr. Mangles adduces four particular cases, in each of which he considers the Sudder Court to have proved its own inefficiency as a controlling authority.

The first is that of Mr. C. J. Middleton and the late Court of Appeal for the division of Calcutta.

Had this case been given in more detail, Mr. Mangles would, I think, have discovered that it told fully as much against the Government as against the Sudder Court, and that, therefore, if a substitute was to be in consequence created for the latter, in the person of his proposed grand justiciary, it would have been but consistent to have suggested some scheme for imparting vigour to the former.

If the notoriety of the malpractices in the Provincial Court (assuming it to have been as represented) was such as to require even an authority, shackled by rules and judicial habits, to cast those rules aside and commence "inquisitorial proceedings," what is to be said for the supineness of the Government, which had equal advantages as to information, and was neither fettered by judicial rules or by those judicial habits which are now discovered to constitute a disqualification for the discharge of judicial duties?

The fact is, that the abuses in the Provincial Court were brought forward precisely as all judicial abuses ought to be, namely, by a representation from a party affected by them; for it was in his capacity of guardian to a minor, and consequently a party in a suit, that Mr. Bird brought the matter to the notice of Government.

With regard to the subsequent proceedings of the court, I have some right, as having at the time been a member of it, to complain of the manner in which certain opinions, supposing them to be erroneous, are treated of, as if expressed by the whole court, when in fact they were recorded only by certain individual members of that tribunal, and objected to by others.

I beg the Board to refer to the minutes recorded by Mr. D. C. Smyth, Mr. Stockwell, the late Mr. Barwell and myself, in our capacity of judges on the occasion in question.

These documents will be found among the papers attached to this minute, and are well worthy of a careful perusal; but for convenience of illustration, I will here insert the concluding passage of my own minute, on the case of Kalee Pershand Ghosal *versus* Mudhoo Soodun Seu. "Upon a deliberate consideration of the circumstances above detailed, I am of opinion that this case, even if it stood by itself, must be held to furnish grounds for the institution of a prompt and effectual inquiry into the manner in which business was conducted in the late Provincial Court, and more particularly by Mr. C. J. Middleton, and that taken in conjunction with that of Neelmunnee Paul Choodree *versus* Raoee Vurpa Mohee,

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which was brought before us by Mr. Moore's letter of the 27th January last, and with the many cases that were disposed of previously to my joining the English sittings, it imposes upon us the duty of recommending to Government that an inquiry of the nature alluded to in the 7th and 8th paragraphs of the letter from the secretary to the Board of Revenue, of the 15th April 1834, be immediately set on foot. I am further of opinion, with reference to Mr. C. J. Middleton's approaching departure from India, that this communication ought to be made to Government without loss of time."

This minute, together with another recorded by Mr. Braddon, on the case of Ramkoomar Turkar *versus* Ram Mohun Chatterjee, went up to Government with a letter from the register, dated 26th March 1835, wherein it was stated "That the majority of the judges are of opinion, that an inquiry of the nature indicated in the 7th paragraph of the letter from the secretary of the Sudder Board of Revenue, dated the 15th April last, should immediately be set on foot."

Here then the matter was placed in the hands of the Government, with a distinct recommendation from the Sudder Court, that a searching inquiry, such as could only be made by a commission appointed for the purpose, under the provisions of the existing Regulations, should, as suggested by the Sudder Board, be set on foot.

Now, what was the reply, dated 27th March 1835, of Mr. Secretary Mangles to the register's letter? It will be found among the papers before referred to, and well deserves notice.

Instead of taking advantage of the opportunity afforded for instituting, without any deviation from established practice, the strictest possible investigation, it throws back the whole task of inquiry upon the Sudder Court, and concludes with a passage which, in fact, precluded the possibility of any complete and thorough investigation.

The passage runs thus :—

"The Governor concludes there is new matter before the court, and that it is not proposed merely to revive the investigation in which the opinions of the court have already been expressed, which would be trying Mr. Middleton a second time on questions which have been once decided."

The inquiry, restricted as it was by the above order, and the non-appearance of some of the parties (notwithstanding the usual summons having been issued) to a single case, was undertaken by Mr. D. C. Smyth and myself, and a report of our proceedings will be found among the accompanying papers.

It will, I think, be admitted, that our inquiry was conducted in the most fair and open manner, though still in strict conformity with those rules of judicial practice which are never lightly thought of by any who have not lost sight of the master principle of our native jurisprudence, that the safety of innocence is of far more sacred consequence than the punishment of guilt.

I think that I have now shown, that if any errors were committed in Mr. Middleton's case by the Sudder Court, those errors were retrieved; and that the blame of the incompleteness of the inquiry it underwent (if incomplete it was), rests ultimately, not with the court, but with the Government.

The next case adduced by Mr. Mangles, is that of Mr. C. R. Martin, late Judge of Hooghly.

I have not time to go over the papers in this case, and must therefore take the accuracy of the epitome in Mr. Mangles' note for granted.

It is evident, from his manner of stating the case, that Mr. Mangles imputes blame to the Sudder Court; first, for not acting upon an anonymous petition, and secondly, for not receiving a recriminatory charge from a subordinate functionary who was himself under trial before the officer against whom he complained.

We may hence infer what the character of the "inquisitorial proceedings" which it is his object to introduce into our judicial administration would be.

Secret and anonymous informations, and recriminatory charges against those who offend them, are precisely the weapons in the use of which a native delinquent is most expert.

Let it be but once received as a rule, that proceedings are to be instituted against any European functionary upon such rotten grounds as these, and the whole department will at once be paralysed.

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No integrity, no zeal, no industry would suffice for the protection of the unfortunate functionary who might happen, in the honest discharge of his duties, to kindle the wrath of any powerful individual against himself.

Mr. Martin's faults were at length brought forward, as in this country such faults generally have been, by the communications of an independent collateral functionary.

I have the highest respect for Mr. Lewis, but I cannot really believe him to be so very superior to all of his grade, as is implied in the assumption that abuses similar to what he reported are now going on, with the connivance and privity of other Commissioners.

It is proverbially unfair to condemn the many for the unworthy few, and assuredly most unwise to distrust a whole service, because here and there an individual has shown himself undeserving of that confidence, by withdrawing which, we withdraw every generous motive of action, to fall back upon the most base and sordid of human feelings, interest and fear.

I will touch but very lightly upon the cases of the native judges, because in fact all that I find upon that head goes little further than to corroborate the doubts expressed by others as well as myself, as to the wisdom of those sweeping measures whereby the administration of civil justice has been so lavishly entrusted into such hands.

It is notorious to every man acquainted with this department, that there is none so little susceptible of control, and therefore none into which untested agency ought to be more sparingly and cautiously admitted.

Such scruples have been made the subject of unmitigated ridicule, and now the result is a proposal to invest an individual with unheard of powers, as if by so doing we could at once impart to him a degree of unheard of sagacity, in order that he may succeed where the local authorities are asserted to have failed.

But what reason have we for supposing that the gentleman who may be selected to fill the projected office, will so far excel the late Judge of Tirhoot, who seems to have been deceived by his native subordinates, as never to be himself in like manner misled?

Moreover what Mr. Dashwood failed to detect, did not remain hidden from others, and Messrs. Harding, Nisbet and Gough did their best to get the district relieved from the incompetent and unworthy functionaries complained of.

Mr. Mangles seems really to blame the Sudder Court for not proceeding against one of those individuals upon the vague and general statement contained in Mr. Gough's letter, forgetting, I suspect, that, opposed as most of the members of that court were to the large scale upon which native agency has been introduced, they might, by pursuing such a course, have subjected themselves to the imputation of being biased by prejudice against the class to which the parties accused belonged.

For the reasons above stated, in addition to many others, I must enter my earnest protest against the proposed scheme for placing in the hands of an individual, and he too one to be selected perhaps for his freedom from judicial habits; the great powers over the Judicial Department hitherto exercised by the Courts of Sudder Dewanny and Nizamut Adawlut.

Were it possible, indeed, to find an individual gifted with such a command of native language as to enable him to dispense with the aid of any native amlah, and at the same time endowed with an exemption from all prejudice or passion, then perhaps the proposed powers might with safety be entrusted into his hands; but as we know that whoever might be selected would have his own prepossessions or theories to warp his judgment, and necessarily be open in a greater or lesser degree to the suggestions of the native officers around him, we may be allowed to doubt whether, in his tours of inquisitorial inspection, he would not create as much mischief as he would remove.

It remains for me only to give a hint, for I am not prepared to do more, of the plan that has occurred to me for relieving the Sudder Court of its executive duties.

I would transfer these to a Board of Police and Justice.

That Board should in general be stationary, but ever prepared to move when occasion required, or Government might be pleased to direct.

Charges against European functionaries, ought in the first instance to be taken up by this Board, and upon their intimation of sufficient grounds for such a procedure appearing, Government should be empowered to direct a court, to consist of

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of five members, formed upon the model of a court martial, to assemble for the trial of the party accused.

Such a measure would of course be expensive, but there is no taste so costly as one for novelty; and since we have become dissatisfied with the old homely institutions, to which the people, I suspect, would not be sorry to return, we must even bear the inevitable consequence of our love of change.

3 October 1838. (signed) *T. C. Robertson.*

On the foregoing minute I have only to observe, that Mr. Robertson, averse as he is to a change of old institutions, admits the expediency of altering the constitution of the Sudder Court, so as to relieve it of its executive functions. A Board, to which Mr. Robertson would transfer those functions, would be an unnecessarily expensive means of providing for the performance of them, without being so efficient as that proposed in the late officiating secretary's note.

(signed) *A. Ross.*

I think it right to record, that I do not consider the alteration here alluded to as being expedient, but only as being inevitable.

(signed) *T. C. Robertson.*

Jud. Cons. 22 Oct. 1838. No. 7.

Minute by the Honourable *W. W. Bird*, Esq.; dated 20 October 1838.

All appear to be agreed that a change of some kind or other for the purpose of relieving the Sudder Court of the portion alluded to of its executive functions, is either expedient or unavoidable, and as the question has been referred for the consideration of the Governor-general, to whom the present discussion will of course likewise be forwarded, it will be for his Lordship to determine on the most proper course to pursue, for the purpose of carrying such change into effect.

I should not, therefore, have thought it necessary to add any thing more to what I have already said upon the subject, had not an expression made use of by me in my former minute been a little misunderstood, or at least made use of in a sense which certainly was not intended by me.

By the term "inquisitorial," I did not mean to imply that the proceedings to be had recourse to should be conducted in a spirit that any honest or upright man might have just grounds to complain of, but that those proceedings should be of an inquiring, examining and searching nature, which, though not the common, is the literal meaning of the term "inquisitorial." I meant, in short, that the proceedings in question should be conducted in the mode, and with the view pointed out in paragraph 8 of the despatch from the honourable the Court of Directors, dated the 7th October 1835, which they had expressed as follows:—

"In the instructions which you will address to the Commissioners on investing them with this additional and most important office, you will inform them that it will be their duty to make themselves accessible to the complaints of all who may have aught to allege against any functionary acting either in the civil or criminal branch of the Judicial Department; that they will be held personally responsible for any neglects or abuses which shall not have been inquired into and corrected, or reported by them to the Government, and that to screen or overlook the demerits of their fellow-servants will be held by us to constitute a disqualification for any situation of trust or importance."

This duty, we are all of opinion, the Sudder Court, either from its constitution or some other latent cause, cannot efficiently perform, and, therefore, unless the demerits of public servants are to remain undetected or overlooked, there is no alternative but to place the performance of it in other hands.

The character of a public officer entrusted with the exercise of judicial functions should be above suspicion. It is not like that of a private individual, who is acquitted in the eye of the world if nothing has been actually proved against him; but a public functionary should stand upon higher ground, and before he can properly be again entrusted with the administration of justice, should be able to satisfy the Government, whose servant and representative he is, of the utter groundlessness of the charge, and should court rather than shun the most searching inquiry into his conduct.

No man of real integrity, zeal and industry, who does his duty as he ought, will have so much to apprehend as at present, either from secret and anonymous information,

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mation, or from recriminatory charges, under the change proposed to be introduced. It will be fatal to such as the Middletons and the Martins, but to those whose conduct can bear investigation, it will afford that protection which the certainty of a severe and scrutinizing inquiry never fails to afford against calumny and misrepresentation.

(signed) *W. W. Bird.*

20 October 1338.

(No. 216.)

Jud. Cons. 22 Oct. 1838. No. 8.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India, to *W. H. Macnaghten*, Esq., Secretary to the Government of India with the Governor-general; dated 22 October 1838.

Sir,

In continuation of my letter, No. 172, of the 20th August last, I am directed by the honourable the President in Council to transmit to you for the purpose of being submitted for the consideration and opinion of the Right honourable the Governor-general of India, the accompanying copies of papers, as noted in the margin.*

* Copy of Letter R D. Mangles, Esq., late Officiating Secretary to the Government of India, dated 24 September 1838. Minute by the Hon. T. C. Robertson, Esq., dated 3 October 1838, and Notes by Messrs. Ross and Robertson. Minute by the Hon. W. W. Bird, Esq., dated 20 Oct. 1838.

I have, &c.

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India.

Fort William, 22 October 1838.

Legis. Cons. 5 Nov. 1838. No. 1.

From *W. H. Macnaghten*, Esq., Secretary to the Government of India with the Governor-general, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India; dated 15 October 1838.

Sir,

I am directed by the Right honourable the Governor-general to acknowledge the receipt of your letter, No. 172, dated the 20th August last, with its enclosures, regarding the expediency of relieving the judges of the Sudder Dewanny Adawlut, from the performance of the executive duties of control and superintendence over the civil and criminal proceedings of the subordinate judicial authorities.

2. In reply, I am desired to forward, for the consideration of the honourable the President in Council, the accompanying copy of a minute recorded by his Lordship on the subject of those documents.

3. With reference to the concluding paragraph of your letter now acknowledged, I am desired to observe, that according to the best of his Lordship's recollection, the measure therein proposed, of publishing the charge and sentence in all cases where the servants of Government in the Civil Department are brought to trial, has been already discussed, and that the honourable the Court of Directors signified their disapprobation of that measure.

I have, &c.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India with the Governor-general.

Simla, 15 October 1838.

Jud. Cons. 5 Nov. 1838. No. 2.
Papers on the superintendence of Civil and Criminal Judicature.

Minute by the Right honourable the Governor.

I have given my best attention to these papers, and am sorry to find myself far from convinced of the propriety of a measure which is recommended to me by the high authority of the President in Council. I may frankly avow, that I have come to the consideration of this proposal with but little prepossession in its favour, for I am deeply impressed with the feeling, that there has been with successive governments of India too ready a disposition to adopt extensive changes of system in cases only requiring something of administrative reform. Under

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frequent changes of this kind, no system is fairly tried. The confidence of the people is shaken, and they become utterly at a loss to know to what authorities or to what tribunals they are to look with consistent respect. We have a very limited number of trustworthy agents; we have a vast number of important and responsible situations; we must be sometimes disappointed in the efficiency, and even in the proper conduct of our officers; yet I would not, upon occasional instances of such disappointment, be hasty to condemn our present means of enforcing a due performance of public duties, or to look to new classes of agency. Whilst, however, I avow this ground of prepossession against the plan proposed, I trust that I shall not be the less disposed candidly to examine it.

2. The administration of justice is at present mainly controlled by the Government and by the Courts of Sudder Adawlut, assisted by the judges, and in some degree by the Commissioners.

3. I hold, that as regards the effect of mere superintendence, the first security for maintaining purity and efficiency in the conduct of our officers in all departments is to be sought in the spirit by which the Government is guided, and which it impresses on all the authorities who act in co-operation with it. A high tone of public principle, and a careful yet temperate vigilance and firmness consistently exhibited and enforced by the Government, will, it has been my belief, leave very few serious abuses undetected. The superior authorities are not without ample means of acquiring information on the general state of the administration in any district, and it is at all times within their power to resort to measures of the most vigorous local scrutiny, where there may be evidence of a necessity of such a course of proceeding; and honest and earnest endeavours on the part of those authorities to discharge with impartiality this branch of their duties, cannot but produce decided effects in stimulating or confirming the zeal and vigilance of all subordinate officers.

4. The instrument with which in the Judicial Department, the Government is more directly to work, is the Court of Sudder Adawlut, and the principle of the objections entertained by Mr. Mangles to this court being so used, is very fairly and forcibly stated by him. I should agree with him in thinking that the functions of accuser on the part of the public and of criminal judge, should not be held by the same body, and that in so far the duty of a vigilant scrutiny into character should not be joined with that of a subsequent careful and final decision on the evidence; but this objection does not, in my opinion, apply to the institution of proceedings by the court, to a trial by a commissioner independent of the court, and to a subsequent revision by the court, when subject especially to the check of a report to the Government of the judgment given by the commission. If it were so, the objection would also be applicable to the Sudder and other Boards, and Regulation XVII. of 1813 should be altogether repealed. Nor does the objection apply to any other proceedings of an analogous description of these commissions (having for their object only to determine on the propriety of retaining officers in the public services), which are now conducted, whenever the occasion arises, equally under the authority of the Sudder Court and of the superintending Boards.

5. It is objected, secondly, to the Sudder Court, in the papers before me, that its duties require it to be stationary, whilst local observation and inquiry are essential; and thirdly, that the multiplicity of other duties leaves no room for the perfect performance of this superintendence.

6. With regard to these two objections, I do not believe that any scheme of general inquiry by travelling in this wide country, and with this difficult climate, will ever be successful. For the investigation of a particular case, it is always to the court to depute one of its own judges, or other competent officer, and with files lightened as those of the Sudder Courts now are, there is no ground for believing that they do not possess abundant leisure for this duty of control, whilst any relief to be gained by the transfer of this special duty, to be coupled, as is recommended, with a deduction in the number of judges, could, under any circumstances, but in a slight degree affect the time which may at present be given to the general business of the courts.

7. I am not aware that it is necessary to dwell further on these particular objections which have been stated to the existing system. I would, however, remark upon the leading principles of our scheme of judicial superintendence, that the attention of the authorities responsible for such a duty must be directed as well

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well to the ability and the efficiency with which generally judicial functions are performed, as to flagrant cases of misconduct, and I should be exceedingly sorry to see the branch of supervision first-named placed even in part in other hands. It is well remarked by the honourable Court, that "it is in the execution of their own duties that the judges of the Sudder Adawlut are enabled and qualified to superintend with judgment and effect the manner in which the duties of the subordinate tribunals are performed." The reports which are compiled by them are most valuable to the Government, and I do not think that information upon the general character of our judicial officers could be by any other method so well supplied, or that the Court could render such information with any thing like the same accuracy and usefulness, if deprived of an essential portion of the data on which its judgment must be formed, and called upon to exercise a divided supervision with other functionaries.

8. Cases of flagrant delinquency present, no doubt, a peculiar difficulty. Though, by the plan proposed, a superintendent would be named, by whom *primâ facie* cases of this description might be brought to notice, it is not clear to me in what manner it is intended that they should be tried. I would, however, rather depend upon public report, and upon our local officers, than upon an inquisitorial agent, hastily gathering up the rumours which may prevail in each district; and I have seen no better proposal for the trial of such cases than that it should take place, as is intended by Regulation XVII. of 1813, before a special commission, which may occasionally, as is provided for by Regulation VIII. of 1817, act under the direct superintendence and instructions of the Government.

9. I would add, on the general principles on which the proposed plan is vested, that the Government should exercise a just and firm vigilance over its officers, but that measures which may be construed as being conceived in a spirit of general distrust and jealousy, carry with them great danger of impairing those feelings of confidence and generous emulation, which are of the highest value; and with regard, especially, to our native judges, it is to be remembered, that the incentives presented by the improved and honourable prospects lately opened to them, have scarcely been tried, and that more may be reasonably hoped from the action of such incentives than from a narrowness of inquisitorial scrutiny, fomenting, possibly, many groundless accusations, and leading to a general want of confidence, while my experience in these provinces has satisfied me that the reports now rendered respecting those judges, are likely to bring, from time to time, before the Government and the Court, nearly every particular on which information can be derived, in regard as well to their personal character as to their efficiency and regularity in the despatch of business.

10. I need not dwell on the cases referred to in the note of Mr. Mangles with the facts of which I am not personally acquainted. It is possible, I need only say, as respects those which have been passed under my own observation, that the cases of the native judges in Tirhoot might have been earlier brought to notice, if an appointment, such as is at present recommended, had existed, but the case of Mr. C. R. Martin is one in which the sufficiency of the existing machinery for its object appears to me to have been not doubtfully established.

11. The existing system may be open to improvement, and I think that its progress to improvement may be traced, for I know that some of our best judicial authorities are studiously endeavouring to satisfy themselves upon the best means of extending the minute superintendence of the courts to the lowest class of judicial officers. But upon all the considerations which I have above stated, I am not of opinion that that system is in any essential degree open to the strong objections which have been urged against it.

12. I shall proceed to offer a few observations on the merits of the particular scheme which has now been suggested.

13. The scheme has this to recommend it, that if an agent of energy, of ability, of sound judgment and of high station in the service were selected, his proceedings would have all the efficiency of undivided exertions, coupled with all the authority which would belong to such a character as I have described. But no one man would be competent to the duty which would be required from him. Few, indeed, would be the hours which he could give to each station, if he were to visit within one or even two years all those that lie within the wide limits comprised within the governments, whether of the Lower or the North Western Provinces, and if it is expected that in each place he is to examine the truth and falsehood of all reports

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of official misfeasance, and to sift every source of information, I know not what period would suffice for his circuit. The seasons of India are opposed to such journies, except for a few months in the year. The European constitution, especially with the higher officers, to whom alone it could be proposed to entrust such extensive powers, is ill adapted to continuous exertions of this kind. The selection of the officer may be unfortunate. He may become indifferent or inactive, or, what would be worse, he may be blindly zealous and unintentionally unjust, or he may utterly fail in health or in qualification, and a substitute may not be easily found. And, on the whole, even upon these considerations, I am well satisfied that it is better to rest upon our existing constitution, and the members of our supreme judicial courts, from whom, as regards many of the highest qualifications none are disposed to withhold confidence, than in a single agency so liable to derangement. I need not advert to experiments of this nature in which, during the short period of my stay in India, the Government has incurred disappointment. But it will, I think, be generally felt, that with a very limited number of agents, a great hazard may be incurred from the multiplication of offices requiring, in the single officers selected for them, a combination of rank and experience, and of many mixed and rare qualities.

14. The objection to the scheme under discussion, arising from the inability of the single superintendent to acquire trustworthy local information respecting the affairs of so many districts so far apart from each other, has been fully admitted by Mr. Bird, who proposed, in consequence, still to call in the aid of the local Commissioners as an essential part of the project. But this aid, so far as it can be effectual, is fully open to the Government and the Sudder Courts under the existing system.

15. Let me state, in addition to the preceeding arguments, that no single officer could carry with him the influence and authority possessed by the collective Sudder Courts, or of an officer acting on deputation under their direction; that a separation, such as is suggested, of the control of the quantity of judicial business would not only, as I have already remarked, be destructive of efficient supervision, but would probably lead also to much collision and embarrassment, and that the proposed plan would mark a dissatisfaction with the existing judicial courts which I do not feel to be just, and the appearance of which would be undesirable and injurious; and I believe that I shall have shown sufficient reasons to justify my conclusion, that it will be preferable to direct our best efforts to the improvement of the present means of superintendence and control over the judicial administration, rather than have recourse to any new schemes, on principles such as those which have been now discussed.

16. I would accordingly submit this recommendation for the consideration of the honourable Court, for whose orders the papers will of course be forwarded at the earliest opportunity.

(signed) *Auckland.*

Simla, 10 October 1838.

Jud. Cons. 3 Dec. 1838. No. 5.

From *W. H. Macnaghten*, Esq., Secretary to the Government of India with the Governor-general, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India; dated 10 November 1838.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 216, dated the 22d ultimo, submitting further papers on the subject of relieving the judges of the Sudder Court from the superintendence of civil and criminal judicature, and in reply, to refer the honourable the President in Council to my communication of the 15th October last, enclosing a copy of the Governor-general's minute, dated the 10th idem, containing his Lordship's sentiments on this subject.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India with the Governor-general.

Head Quarters, Camp near Nallaghur, 10 November 1838.

From

No. 4.
On the Rules regarding Reviews of Judgment framed by the Sudder Court of Calcutta.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general, to *J. P. Grant*, Esq., Officiating Secretary to Government of India; dated 12 August 1839.

Jud. Cons. 9 Sept. 1839. No. 15.

Sir,

I AM directed to transmit to you, for submission to the honourable the President in Council, and for any necessary orders, the accompanying despatches received from the honourable the Court of Directors, overland *viâ* Bombay, viz.

To the Governor-general of India in Council, No. 7, dated 5th June 1839.

To the Governor in Council at Fort St. George, No. 5, dated 29th May 1839.

To the Governor in Council at Bombay, No. 5, 29th May, and No. 6, dated 5th June.

I have, &c.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India with Governor-general.

Simla, 12 August 1839.

(No. 7 of 1839.)

From the Honourable the Court of Directors to the Governor-general of India in Council; dated 5 June 1839.

LETTER dated 24 December (No. 18.), 1838.

WE have perused Lord Auckland's minute of the 10th of October on this subject* with much satisfaction, and entirely concur in the sentiments therein expressed. His Lordship has stated an opinion which we have had frequent occasion to convey to you, when he says, "I am deeply impressed with the feeling that there has been, with successive governments of India, too ready a disposition to adopt extensive changes of system, in cases only requiring something of administrative reform." With respect to the particular scheme in question, we agree also with Lord Auckland in anticipating that it would be followed by failure and disappointment; we cannot conceive how any superintending authority could form a judgment regarding the merits of judicial officers, from attending only to the amount of business transacted by them respectively, without the means of ascertaining further whether the duty which such business had imposed upon them was of a difficult nature, and whether it had been ably and satisfactorily discharged, the most desirable "administrative reform," to be applied to the superintendence exercised by the Court of Sudder Dewanny and Nizamut Adawlut, over the administration of civil and criminal justice; and all that the case requires in our opinion is, that this duty, like those duties which belong to the Court in its judicial capacity, should be subdivided among the several judges, so as to be carried on with promptitude, efficiency and an adequate sense of personal responsibility. We request, that in communication with the Court, you will endeavour to give effect to this suggestion.

We are, &c.

(signed) *R. Jenkins.* *J. Masterman.*
W. B. Bayley. *C. Mills.*
W^m Stanley Clarke. *H. Shank.*
Russell Ellice. *W. Young.*
Henry Alexander. *F. Warden.*
J. W. Alexander. *Henry Willock.*
John Shepherd.

London, 5 June 1839.

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* Submitting, for the Court's orders, papers relating to a project for relieving the Sudder Dewanny and Nizamut Adawlut, from the executive office of superintending the administration of civil and criminal justice, and for confining them to their judicial functions, as the court of the highest jurisdiction, and for transferring the duty of superintendence to a distinct authority.

Jud. Cons.
9 Sept. 1839.
No. 16.

(No. 120.)

No. 160.
To F. Currie, Esq., Officiating Secretary to the Governor-general for the N. W. P.

From *J. P. Grant*, Esquire, Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 9 September 1839.

Sir,

Sir, I have, &c.

I HAVE the honour, by desire of the honourable the President in Council, to forward to you, to be laid before the [honourable the Deputy-governor of Bengal,] the accompanying copy of a despatch from the honourable the Court of Directors, dated the 5th June last, No. 7. of 1839, in which the honourable Court communicate their sentiments on a proposition which was submitted before the Government of India for relieving the Sudder Dewanny and Nizamut Adawlut from the executive duty of superintending the administration of civil and criminal justice, and for confining them to their judicial functions as the court of the highest jurisdiction, and for transferring the duty of superintendence to a distinct authority.

[*Right hon. the Governor-general for the N. W. Provinces.*]

2. With reference to the suggestion of the honourable Court, [his honour the Deputy-governor is requested to] communicate with the Sudder Court on the best method of subdividing the duty of general superintendence by the Court over the administration of civil and criminal justice, so as to be carried on with promptitude, efficiency and an adequate sense of personal responsibility.]

[*His Honour in Council requests that his Lordship will*]

[*responsibility, I have, &c.*]

3. I am directed to take this opportunity of conveying to his honour the Deputy-governor the opinion of the President in Council, that all general business of this nature ought to be performed exclusively by the permanent judges of the court. It is in consequence of the accumulation of the current business of the court that the necessity of the appointment of temporary judges has arisen, and by relieving the temporary judges from all other business, they will have more time to devote to the reduction of that particular description of business, in consequence of which they have been appointed. For all business requiring consultation, such as the consideration of references of a general nature from subordinate courts or Government, the preparation of circular orders, and generally the superintendence of the working of subordinate courts, and any other miscellaneous matters transacted at the English sitting, the number of judges permanently attached to the court is sufficient. To add to that number, by taking up the valuable time of the extra judges by attendance at the English sitting, would seem to his honour in Council to be detracting from their power of reducing the arrears of cases, without corresponding advantage to the other departments of the business of the Sudder Court.

4. His honour in Council throws out this suggestion to be acted upon if the Deputy-governor, after communication with the judges, see no objection to it.

I have, &c.

Council Chamber,
9 Sept. 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 162.)

Jud. Cons.
9 Sept. 1839.
No. 17.

From *J. P. Grant*, Esq., Officiating Secretary to Government of India, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general; dated 9 September 1839.

Sir,

WITH reference to your letter of the 12th August last, I am directed by the honourable the President in Council to forward to you, for the information of the Right honourable the Governor-general of India, the accompanying copies of a letter from the honourable the Court of Directors, dated the 5th June last (No. 7.), and the letters addressed to the secretaries to the Governments of Bengal and the North Western Provinces with reference to that despatch.

I have, &c.

Fort William,
9 September 1839.

(singed) *J. P. Grant*,
Officiating Secretary to Government of India.

From

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India, Fort William; dated 3 October 1839.

Jud. Cons. 4 Nov. 1839. No. 3.

Judicial.

Sir,

I AM directed to acknowledge the receipt of your letter, No 162, dated the 9th ultimo, transmitting copies of communications addressed to the Governments of Bengal and the North Western Provinces, with reference to the Court of Directors' despatch, No. 7, dated 5th June 1839, on the subject of relieving the Sudder Dewanny and Nizamut Adawlut from the executive duty of superintending the administration of civil and criminal justice, and in reply, to state that the Governor-general approves, generally, the tenor of the instructions issued to the local governments by the honourable the President in Council, and will be anxious to learn what reply is given to his honour's suggestion by the judges of the Sudder Court at Calcutta.

I have, &c.

Simla, 3 October 1839. (signed) *T. H. Maddock*,
Officiating Secretary to the Government of India
with the Governor-general.

(No. 131.)

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 4 November 1839.

Jud. Cons. 4 Nov. 1839. No. 4.

Sir,

WITH reference to my letter, No. 102, dated the 9th September, I am directed by the honourable the President in Council to request that you will, with the permission of the honourable the Deputy-governor of Bengal, send up the report from the judges of the Sudder Court at Calcutta on the subject therein treated, when it shall have been submitted to and disposed of by the honourable the Deputy-governor, the Right honourable the Governor-general of India having expressed a wish to see it.

I have, &c.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

Council Chamber, 4 Nov. 1839.

(No. 3.)

EXTRACT from the Proceedings of the Honourable the President of the Council of India in Council in the Judicial Department; dated 23 December 1839.

Legis. Cons. 13 Jan. 1840. No. 11.

READ letter from Secretary to the Government of Bengal, No. 1862, dated the 19th ultimo, with enclosures, on the state of business in the Calcutta Sudder Court.

Read letter to Secretary to the Government of Bengal, dated 23d December 1839.

Ordered, That the foregoing papers be transferred in original to the Legislative Department for further consideration, and for the purpose of consulting with the Right honourable the Governor-general of India upon the subject.

Order.

(True extract.)

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Legis. Cons. 13 Jan. 1840. No. 12. Judicial Dep.

(No. 1862.)

From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India, Judicial Department; dated 19 November 1839.

Sir,

I AM directed by the honourable the Deputy-governor of Bengal to acknowledge the receipt of your letter, No. 102, of the 9th September 1839, with its enclosure, on the subject of the mode of transacting business in the Sudder Court of Calcutta, and to transmit with this reply an original communication from the Sudder Court, dated 5th instant, which has reference to the suggestions conveyed by your letter above noticed.

2. The honourable the President in Council will observe, that the Judges of the Sudder Court are of opinion, generally, that business would be facilitated by relieving some of their body from all other duties, and enabling them to devote their time exclusively to the reduction of the arrears on the regular files of the court, leaving the rest to attend to the correspondence and the general business of the court.

3. The majority of the court suggest accordingly, that the business be distributed in the following manner; viz. that one judge undertake (as at present) the revision of periodical returns and statements, and that the three senior judges conduct the English correspondence, calling, when necessary, the aid of the judge to whom is allotted separately the summary and miscellaneous appeal department. In questions relating to the official character of covenanted servants, it is proposed that the papers should be considered by the whole court.

4. Upon this the Deputy-governor directs me to remark, that the state of business in the court is at present such as to call for active and immediate remedy. The English correspondence, though not absolutely in arrear, is yet subject to continual and very embarrassing delays; and while this part of the work occupies the judges' time in the consideration of matters often of small comparative importance, the far more important business of the court, the trial of appeals specially in civil cases, is, as his honour in Council will perceive from the statement in the margin,(*) in so very unsatisfactory a condition, that it is hardly possible to calculate when, according to the present mode of conducting the business, the existing arrears will be disposed of.

5. There are, the Deputy-governor believes, but four kinds of cases connected with the English Department which require to be considered by more than one judge, viz. constructions of law resolutions for the practice of the court; opinions required by Government on proposed laws; and reports or recommendations connected with or arising out of investigations made or to be made by Commissioners, into the conduct and character of covenanted officers. With these four important exceptions, the Deputy-governor is strongly of opinion that all the English business

(*) Civil Suits before the Sudder Dewanny Adawlut. Regular and Special Appeals.

MONTH.	Depending and Admitted.	Disposed of.	Remaining.
1839:			
January - - -	637	3	634
February - - -	666	5	661
March - - -	674	4	670
April - - -	696	16	680
May - - -	718	6	712
June - - -	736	12	724
July - - -	744	21	723
August - - -	756	19	737

Criminal Trials before the Nizamut Adawlut. Miscellaneous, including Special Appeals.

Disposed of.	Depending and Instituted.	Decided.	Remaining.
817	90	31	59
836	77	21	56
453	79	19	60
822	88	38	50
696	78	27	51
585	73	22	51
703	163	42	121
608	159	27	132

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ness of the court, including the revision of statements and the receiving and replying to all references from subordinate courts and other offices, should invariably be conducted by one judge, named for that purpose by the Bengal Government. The excepted matters above noticed should be disposed of by three judges, also named by Government, of whom one should be the judge named for the general correspondence, and another the judge engaged in the miscellaneous and summary department of the court; these three judges should likewise form a court for the purposes of section 5, Regulation IX. 1831.

6. To this end, the Deputy-governor proposes to instruct the court, in reply to the register's letter, and this will no doubt provide effectually for the transaction of one branch of its duties, and give to the court much more leisure than is now possessed for the performance of its other labours. But there is a prominent fault, the Deputy-governor thinks, in the mode of procedure in the Sudder Court, as respects the trial of regular and miscellaneous appeals, which must be thoroughly remedied before it can be rendered as efficient as it ought to be, and to which, indeed, is to be in a great measure ascribed the present remarkable arrear of business, which threatens, unless speedily provided for, to render the Sudder Court almost useless for the purposes for which it is constituted.

7. The fault to which the Deputy-governor alludes consists in an undue exercise of the powers conveyed by clause 6, section 2, and clause 7, section 4, Regulation IX. 1831, which authorise a single judge to refer to one or more judges, any case which may seem of such a nature as to require more than one opinion.

8. The consequence of this is, as his honour is informed, that cases are often sent from judge to judge all round the court, to the great interruption of other business, to the grievous vexation of the parties concerned, and sometimes, it would seem, without obtaining for the case, after such protracted deliberation, the advantage of any definite decision.

9. An example of this mode of procedure is given in a letter to the Government of Bengal from the secretary to the Sudder Board of Revenue, under date 27th March last, which is forwarded with this despatch, and which details the manner in which a case, decided first by Mr. D. C. Smyth, in August 1835, was brought, in consequence of an application for review, before eight judges in succession, some of them hearing it twice. It will be seen that the tour of this case commenced in January 1836 and closed apparently on the 30th May 1838; that no final order had been issued in March 1839, and, as far as the Deputy-governor is informed, no final order has been issued to this day.

10. This system is not confined, his honour understands, to civil cases, but obtains also in criminal trials; and the Deputy-governor has been lately informed, that a criminal appeal of peculiar urgency presented to the court some months back, and relating to a complaint of illegal duress, has already travelled to five judges, is yet to be heard by a sixth, and is very likely to be sent, in case of the opinion of the sixth judge not fully according with those of his colleagues, to undergo a second circuit in the Sudder Court of Allahabad.

11. Two modes of remedying this mischief have suggested themselves to the Deputy-governor, and I am directed to submit both to the consideration of the Supreme Government; the one, to alter the law in such manner as to make each single judge decide finally, and without the power of further reference, all cases that may come before him, in which, under the general Regulations, he is competent to pass final orders singly; the other, to leave the power of reference in the hands of each judge, but to prescribe exactly the manner in which it shall be exercised, viz., that any judge requiring the assistance of his colleagues in any case, or point of a case, should only obtain it by causing the case or the point to be heard and argued in open court before himself and two other judges, sitting together, and that this "full bench," so constituted, should finally decide the case or the point so referred to them, without the power of referring it further.

I have, &c.

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

Fort William, 19 November 1839.

(No. 2916.)

Legis. Cons. 13 Jan. 1840. No. 13.

From *J. Hawkins*, Esq., Register Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq., Secretary to the Government in the Judicial Department; dated 5 November 1839.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, C. Tucker, E. Lee Warner, Judges; and A. Dick, Esq., Temporary Judge.

I AM directed to acknowledge the receipt of your letter, No. 1601, dated 26th September, together with its enclosures, communicating the instructions of his honour the President in Council, and of the honourable the Court of Directors, on the subject of the division of the duties of this court, as connected with the general superintendence over the administration of civil and criminal justice, and its more regular functions as a court of appeal.

2. In reply, I am desired to observe, for the information of his honour the Deputy-governor, that the English correspondence of the court is now conducted under the superintendence of the judges (permanent and temporary) collectively, that the supervision of the several periodical returns, civil and criminal (with the exception of gaol delivery statements, which are equally distributed), is entrusted to one of their body, and the hearing of all summary and miscellaneous appeals to another; the supervision of the statements now rest with Mr. Braddon, who refers to the court generally all matters of importance connected with them, while Mr. Reid conducts the department of summary and miscellaneous appeals.

3. The court entirely concur in the opinions expressed in the correspondence under acknowledgement, in regard to the increased facility in the despatch of business, by relieving some of their body from all other duties, and enabling them to devote their time exclusively to the reduction of the arrears on the regular files of the court, leaving the rest to attend to the English correspondence and the general business of the court.

4. But whatever may be the number of judges appointed to conduct the duties last mentioned, the court are clearly of opinion that they should have the power of calling in the judge presiding in the department of summary and miscellaneous appeals to assist in their deliberations. Numerous references are made to the court at large from that department, and it would obviously be desirable that the judge making the references should be present at the discussions arising out of the points submitted for the general consideration of the court, added to which, the constructions by the court of questions of law, and their rules of practice, are of much more frequent application than in any other department of the duties of the court.

5. With reference to the foregoing observations, the court would suggest that the supervision of the periodical returns be left, as at present, with one of their body, and that the English correspondence be conducted under the superintendence of the three senior* permanent judges of the court, with power to call in the aid of the judge (whether permanent or temporary) who conducts the summary and miscellaneous appeal department. The only exception they would make is in the case of questions relating to the official character of covenanted servants of Government, which they consider should be open to the whole court.

*According to dates of appointment.

6. Should the foregoing arrangement meet with his honour's approval and concurrence, the court will proceed to carry it into practice, on receiving instructions to that effect.

7. I am desired to add, on the part of Mr. Dick, that he concurs in the above as a temporary measure. He is, however, of opinion, that the summary and miscellaneous appeals should be assigned to one of the senior permanent judges, a member at the English sittings, unless those appeals be equally distributed among all the judges. On the other hand, the other judges would continue the present practice of entrusting the duty of hearing all such appeals to one of their body, the benefit resulting from which experience has amply proved; and they are further of opinion, that the selection of the judge to preside in that particular department should be made from the collective number of permanent and temporary judges.

I am, &c.

(signed) *J. Hawkins*,

Register.

Fort William, 5 November 1839.

(No.

(No. 152.)

From *M. A. Bignell*, Esq., Officiating Secretary to the Sudder Board of Revenue, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, Revenue Department; dated 27 March 1839.

No. 14.
Legis. Cons.
13 Jan. 1840.
Enclosure.

Sir,

I AM instructed by the Sudder Board of Revenue to acknowledge the receipt of your letter, No. 214, of the 5th ultimo, referring to your former communication, No. 1243, of 10th July last, and calling for a report on a petition of Ramkishore Rai, of Dacca, transmitted to this office with your predecessor's letter, No. 1413, of 15th December 1835. In reply, I am instructed to observe as follows.

Present:
J. Pattle and C. W. Smith, Esqrs.

2. The Board regret to state, that although they adopted measures to give effect to the instructions of Government immediately upon the receipt of Mr. Secretary Mangles' letter above mentioned, yet up to the present day no final orders have been issued by the Sudder Dewanny Adawlut regarding the case referred to. The following is a short summary of the several proceedings which have been held on the subject.

3. On the 12th August 1835, Mr. D. C. Smyth took up a petition presented by one Ramsoonder Kusaree, complaining of an order of the Judge of Dacca, dated 19th March 1835, directing possession of certain kismuts held by the petitioner to be given to Ramkishore Rai, the auction purchaser, at a sale for arrears of the estate to which the petitioner's lands appertain, referring the petitioner to a regular suit, if dissatisfied with the order. Mr. D. C. Smyth held, that under sections 32 and 33, Regulation XI. of 1822, an auction purchaser has no right to oust a mofussil talookdar until the right to increase the former jumma shall either have been settled between the parties themselves, or have been decided by a competent court of justice. He determined, therefore, that the summary order of the zillah judge should be reversed, and that the petitioner should be restored to his former possession, and that the auction purchaser, if dissatisfied, might institute a regular suit. On 29th October 1835, Mr. Sutherland, on behalf of Ramkishore Rai, the auction purchaser (who had not been present when the former order was given), applied for a review of judgment, which was refused by Mr. Smyth.

4. On the 15th December 1835, Mr. Secretary Mangles forwarded to the Board a petition presented to the Governor of Bengal by Ramkishore Rai, and stated, that in his Lordship's opinion the judgment of the Sudder Dewanny could not acquire the force of a precedent, without consequences fatal to the stability of the land revenue in the settled provinces. It was further pointed out, that Mr. Symth's decision was clearly erroneous, for it was evident that Ramsoonder Kusaree having purchased a part of the milkicul at a date subsequent to the perpetual settlement, was as much a defaulter as the recorded proprietor. In compliance with the desire of Government, the Board presented a petition for a review of judgment, and availed themselves of the services of Mr. Baillie, in addition to those of the then Government pleader. The Board in their petition referred to sec. 5, Reg. XLIV. of 1793; sec. 14, Reg. I. of 1801; sec. 4., Reg. V. of 1812; sec. 2, Reg. VIII. of 1819; and sections 29 and 30, Reg. XI. of 1822, and contended that Ramsoonder Kusaree, holding a share of an hoozooree talook, with the right of separation, was to all intents and purposes a partner in the estate.

5. On the 29th February 1836, Mr. D. C. Symth held that Ramsoonder Kusaree could not be considered to be a partner in the huzzooree talook, for in the kubala, dated 26th December 1818, there was no mention of any partnership; and although that instrument conferred upon the purchaser the right of separation, which might appear to involve something like co-partnership, yet as no apportionment of jumma, or shares of lands, was recorded in that deed, without which no separation could properly be made, and moreover as the property had been held for 17 years as a mofussil talook, it could not now be treated as any thing but a shekmee tenure. Mr. Smyth added, that when he recorded his former roobookaree, he had not observed that the date of the kubala was prior to the enactment of Regulation XI. of 1822, and he admitted that he had been wrong in citing that law as applicable to the case. In 1818, however, sections 5, Reg. XLIV. of 1793, and clause 5, section 29, Regulation VII. of 1799, were in force; and from those laws, and from numerous decisions of the court, it was clear, he stated, that the auction

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auction purchaser could not summarily dispossess the mofussil talookdar, or collect khas from the ryots, although he might, if he pleased, proceed under Regulation V. of 1812, and other Regulations, to increase the jumma. Mr. Smyth wound up by observing, that although his present order slightly differed from the one he had previously given, yet his opinion that the order of the Judge of Dacca must be reversed remained unaltered, but in consequence of the representation of the Sudder Board, he would refer the case to all the judges of the court.

6. On the 14th April 1836 the case was taken up by Mr. Braddon, who held, that it was clear that the intention of the parties to the sale of 1818 was, that the purchaser should be allowed to have his kismuts separated from the talook, and that not only was this intention manifest from the deeds of sale, but it appeared that, in point of fact, both the seller and the purchaser had applied, at different times, for a butwarrah. Under these circumstances, Mr. Braddon thought it clear, from section 10, Regulation I. of 1793, and section 14, Regulation I. of 1801, that the separations never having been made, the kismuts in dispute fell with the rest of the estate, upon the occurrence of a sale for arrears, and he considered, therefore, that the decision of the Judge of Dacca should be upheld.

7. On the 11th June 1836, Mr. Halhed recorded his opinion to the same effect as Mr. Braddon had done. On the 7th July 1836, Ramsoonder Kusaree petitioned Mr. Halhed for a review of judgment, and that gentleman passed an order, reciting that, although he saw no reason to change his opinion, and was competent to pass a final order, inasmuch as he agreed with Mr. Braddon, yet, out of deference to the wishes of Mr. Smyth, who desired that the case should be sent round the court, he referred it to another judge.

8. On the 8th September 1836, Mr. C. Barnett took up the matter, and gave it as his opinion, that as Ramsoonder Kusaree had been in possession for 17 years, and there was no allegation that such possession had been fraudulently obtained, he could not be dispossessed in a summary suit.

9. On the 28th November 1836, Mr. Money recorded his concurrence with Mr. Braddon and Mr. Halhed; and on the 22d February 1837, Mr. Rattray gave his opinion in accordance with those three gentlemen, but seemed to consider himself bound to send the case on to another judge.

10. On the 9th August 1837, Mr. Hutchinson took up the case; but observing that it had already been decided by a majority, he declined to record his own opinion. He added, however, that certain questions regarding the rights of mofussil talookdars were under discussion at the English meeting of the judges, and he thought it would be better to postpone the issue of orders in this case, until those questions should be disposed of.

11. On the 30th May 1838, Mr. Rattray again took up the case, and observed, that although an answer had been received to a reference made to the Sudder Dewanny Adawlut at Allahabad, yet he wished, that previous to the issue of final orders, the case shall be considered in connexion with that answer by all the judges, who had previously agreed with him, on the 2d July 1838. Mr. W. Money recorded a roobokaree, to the effect that he saw no reason to change the opinion he had formerly given, and directed that the paper should be sent to Mr. Braddon for the issue of final orders.

12. These final orders have not, however, been issued up to the present time, although the Government pleader has been repeatedly requested to use his best exertions to obtain a speedy disposal of the case; and it appears, from a report of Mr. Baillie, dated 11th instant, that Mr. Braddon has again referred the matter for the consideration of the other judges. As soon as the Board shall be made acquainted with the result, they will communicate it for the information of Government; but they cannot refrain from noticing in this letter the very great delay which has occurred in the decision of this important case, arising from the existing practice of the Sudder Dewanny Adawlut, under which it is in the power of any one judge to order a case to be submitted to each of his colleagues in succession, a course which may prove almost interminable.

13. Although it is not strictly within the province of the Board to suggest a remedy for this evil, yet it appears to them that there is one so obvious, and they should think so efficient, that they trust they shall be excused for mentioning it; namely, that whenever a judge may desire to have the opinion of the whole of his colleagues upon any particular case, or point of a case, he shall draw up in English a statement of the point or points upon which he requires such an opinion, which

statement

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statement having been previously circulated to the judges, shall be laid before the Court at their next English sitting, when, if it cannot then be done, an early day shall be appointed for the discussion and decision of the case by the whole of the judges, the pleaders of the parties interested being at liberty to attend, and to urge any arguments they may wish to adduce on behalf of their respective clients. It seems to the Board that this mode of procedure would not only effect a great economy in the time of the court, and obviate the delays which occur under the present system, but would materially expedite justice, and, at the same time afford general satisfaction.

I have, &c.
(signed) *M. A. Bignell,*
Officiating Secretary.

Sudder Board of Revenue, 27 March 1839.

(No. 154.)

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 23 December 1839.

Legis. Cons. 13 Jan. 1840. No. 15, Enclosure.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1862, dated the 19th ultimo, with its enclosure, and in reply, to say that the honourable the President in Council observes with much regret the state of business in the Calcutta Sudder Court, as shown in the table entered in paragraph 4 of your letter. Judicial Dep.

2. In the course of eight months, the arrears of criminal trials have more than doubled. The average number of criminal trials disposed of monthly being about 28, these cases seem to have been never less than about two months in arrear, according to the average rate of decision; so long a delay in this class of cases is to be regretted.

3. In the same time the arrear of civil appeals has increased by 119 cases. The average number decided monthly appears to have been not quite 11, whilst the average number admitted has been more than double that number; viz. 27. At the present rate of decisions, there is an arrear which it would take about five years and three-quarters to work out, so that his honour in Council presumes, that a case now set down could not come to a hearing under that time. The increase of arrear in these cases has been invariably progressing, the file being uniformly heavier at the end of the month than at the beginning, in every month of the series. The evil seems to be getting worse daily.

4. His honour in Council fears, that the effect of this state of things upon the interests of the individual parties actually before the court, though extremely lamentable, is not the only bad consequence of this arrear. One great test of the quality of the work done by the subordinate courts, is the thorough examination which appealed cases undergo before the superior court. The indirect and general advantages of appeal to one high superintending tribunal are sacrificed, if the appeals are not decided till many of the subordinate judges, and perhaps, even the constitution of the subordinate courts have been changed.

5. Under these circumstances, the President in Council feels assured that some material reform of system must be introduced immediately; for it is apparent from the circumstances mentioned in your letter, that under the present system an increase to the number of judges operates in many cases as an impediment to the despatch of business. The plan proposed by his honour the Deputy-governor, as explained in the 5th paragraph of your letter, seems to the President in Council to promise considerable advantage, and he has therefore no hesitation in approving it. He would, however, wish it so far modified as that all the permanent judges of the court should be present in consultation when a construction of law, or a reference from Government concerning a proposed law, may be submitted to the court generally. This will not, he thinks, employ much time. The judges conducting the English and miscellaneous business, would assist at such consultations as a matter of course, whether having permanent or temporary seats on the bench.

6. The evil noticed in the sixth and following paragraphs of your letter, is one which probably may require legislative measures. His honour in Council is not prepared, in order to remedy the present inconvenience, to make so great a change in the established practice as is involved in the first alternative proposition contained

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tained in the last paragraph of your letter; viz., "to make each single judge decide finally, and without the power of further reference, all cases that may come before him in which under the general Regulations, he is competent to pass final orders singly;" notwithstanding that he might, in the words of clause 6, section 2, Regulation IX. of 1831, "in any case of difficulty or importance, deem it expedient and proper that the matter at issue should be tried by two or more judges of the court." His honour in Council, would prefer postponing the consideration of all such substantial changes as this (which involves a principle of great importance, on which there are wide differences of opinion), till the Law Commissioners submit their code of procedure.

7. But the second alternative proposal of his honour the Deputy-governor, seems to the President in Council, to be fully calculated to meet the real evil, without being a substantial change of system. The evil which is so strongly shown in the two cases (one a civil and one a criminal case) mentioned in your letter, evidently arises, not from the matter being referred to the decision of a plurality of judges, but from the manner of making that reference. The present method of sending one case to a number of single judges one after another, by causing the same suit to be pleaded in the same words over and over again indefinitely, entails much useless delay, vexation and expense to the parties; occupies very frequently the time of many more judges than necessary, and by entirely sacrificing the advantage of consultation, leads at last to a very unsatisfactory result. To set against these disadvantages consequent to this system, when a case is originally referred to the whole court, there seems to his honour in Council, to be no advantage whatever; and in other cases the only advantage is, the possibility of saving the time of one judge, if the second judge happen to coincide exactly with the first. In his honour's opinion, it is likely, upon the whole, that there will be more time of the judges saved by making the maximum number of judges to be consulted, in any case, than will be lost by making that number the minimum in all cases in which a single judge refers any matter for the opinion of one or more other judges; at all events the cases referred cannot fail to be expedited by such a method.

8. It occurs to the President in Council, that a similar inconvenience may be felt in some instances in the decision of appeals (in which it requires the concurrent voices of two judges to reverse a decision regularly passed by a subordinate court after a full investigation of the merits), that which is represented in your letter to have arisen from the present method of reference to a plurality of judges in cases so referred, under clause 6, section 2, and clause 7, section 4, of Regulation IX. of 1831. This point will be further considered hereafter.

9. His honour in Council accordingly proposes to transfer this question to the Legislative Department, and to consult with the right honourable the Governor-general upon the subject. But it strikes him as possible, that the object might be gained without a law, if the judges agreeing in the views taken by the Governments of Bengal and India, were to make it a public rule of court that no judge shall refer any case or any point in a case, to be decided by another judge or judges, otherwise than in the manner pointed out in your letter; and that when three judges sit together they shall give one joint judgment, to be determined, of course, by the voices of the majority in cases of a difference of opinion. On this point his honour in Council will be glad to be favoured with the opinion of the court.

10. The original paper which accompanied your letter is herewith returned.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 23 Dec. 1839.

(No. 56.)

Legis. Cons. 13 Jan. 1840. No. 15. Legis. Dep.

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq., Secretary to the Government of India with the Governor-general; dated 13 January 1840.

Letter from Secretary to Government of Bengal, dated 19 Nov. 1839, with Enclosure to ditto, dated 23 Dec. 1839.

Sir,

I AM directed to forward to you for submission to the Right honourable the Governor-general of India the accompanying copies of papers, as noted in the margin, on the state of business in the Calcutta Sudder Court.

2. The

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2. The President in Council to be favoured with the sentiments of his Lordship on the subject generally, and especially on the proposals contained in para. 11 of Mr. Secretary Halliday's letter of the 19th November, and the sixth and following paragraphs of my letter, written by order of his honour in Council, dated the 23d ultimo.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

Fort William, 13 January 1840.

(No. 586.)

From *J. Hawkins*, Esq., Register to the Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal in the Judicial Department; dated 28 February 1840.

No. 3, Bengal Jud. Cons. 28 Dec. 1841.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 212, dated the 6th instant, with its enclosures, and in reply to state, for the information of the Right honourable the Governor of Bengal, that measures have been taken by the court for giving immediate effect to the instructions conveyed in your letter regarding the arrangement for expediting the business of the court.

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
W. Braddon,
C. Tucker,
E. Lee Warner,
Esqrs., Judges;
A. Dick and
J. F. M. Reid,
Esqrs., Temporary Judges.

2. With reference to the concluding paragraph of your letter, I am desired to communicate the opinion of the court, that a resolution for altering the present practice of the court in the manner suggested in the 7th and following paragraphs of Mr. Officiating Secretary Grant's letter of the 23d December last, would be directly opposed to the law, and would require the sanction of the legislative enactment.

3. The court, however, do not recommend the resort to legislative measures, as they think, that by an understanding among themselves to adhere in all practicable cases to a course similar to that suggested by the Government, the end proposed will be in a great measure attained. I am desired to add, that the court have already in some instances acted upon it, and they consider that by an adherence to the plan, the expediency of which they fully recognize, as well as by the present mode of disposal of the English correspondence as indicated in the accompanying resolution, the arrears of the court will in a short time be very materially diminished.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William, 28 February 1840.

RESOLUTION of the Sudder Dewanny Adawlut; dated 28 February 1840.

READ a letter, No. 212, dated 6th instant, from the Secretary to Government of Bengal in the Judicial Department, together with its enclosures, communicating the instructions of his honour the Deputy-governor in reply to the court's letter, No. 2916 of the 5th November last, on the subject of the proposed arrangements for expediting the business of the court.

With reference to his honour's instructions it was *Resolved*:—

1st.—That Messrs. Braddon, Tucker & Reid form a court for considering all resolutions for the practice of the court, not involving constructions of law.

2dly.—That the same judges form a court for considering all reports or recommendations made or to be made by Commissioners into the conduct and character of covenanted servants.

3dly.—That the same judges form a court for the purposes of section 5, Regulation IX. 1831.

4thly.—That the four permanent judges of the court, and Mr. Reid, form a court for considering all constructions of the law.

5thly.—That the same judges form a court for considering all references from Government regarding proposed laws.

6thly.—

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6thly.—That all the rest of the English business of the court, including the revision of statements, and the receiving and replying to all references from subordinate courts and other offices, be transacted by Mr. Braddon.

It was further *Resolved*, that the following letter be written, informing the Government of the measures adopted for giving effect to the present instructions, and communicating the opinion of the court on the subject of the last paragraph of Mr. Secretary Halliday's letter.

(True copy.)
(signed) *J. Hawkins*, Register.

(No. 176.)

Leg. Cons. 21 Feb. 1842. No. 1.

From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *T. H. Maddock*, Esq., Secretary to the Government of India, Judicial Department; dated 1 February 1842.

Jud. Pro. Dec. 1841. Nos. 5 to 8.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying correspondence with the Sudder Court respecting the manner in which the business before the court is disposed of by the judges.

Letter from Register Sudder Court, No. 125, of 21st ultimo.

2. His Lordship would recommend that the suggestions contained in my letter of the 21st December last be carried into effect.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William, 1 February 1842.

P.S.—Please to return the enclosures.

(No. 1575.)

Leg. Cons. 21 Feb. 1842. No. 2.

From *J. H. Young*, Esq., Deputy Secretary to the Government of Bengal, to *J. Hawkins*, Esq., Register to the Sudder Dewanny and Nizamut Adawlut; dated 19 October 1841.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that, with the permission of the court, you will furnish in a convenient form the following information. During each month of the year 1840, and the months from January to August inclusive of 1841, how many regular and special appeals were decided singly and finally by each judge, and how many opinions were recorded by each upon cases decided by more than one judge.

Also, during the entire period above mentioned, how many cases of the above descriptions were decided by one judge, how many by two, how many by three, and how many by more than three judges.

His Lordship is further desirous of knowing how far the system of two or more judges sitting together has been tried in the court, and how it has been found to answer.

I am, &c.
(signed) *J. H. Young*,
Secretary to Government of Bengal.

Fort William, 19 October 1841.

(No. 4168.)

From *J. Hawkins*, Esq., Register to the Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal in the Judicial Department; dated 26 November 1841.

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker, and J. F. M. Reid, Esqrs., Judges.

Sir,

I AM directed by the court, in compliance with the requisition conveyed in your letter, No. 1575 of the 19th ultimo, to forward to you, for the purpose of being laid before the Right honourable the Governor, a statement of cases decided by the

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the Judges of the Sudder Court and Nizamut Adawlut, from the 1st January 1840 to the 31st August 1841, distinguishing those disposed of by one voice from those disposed of by more voices than one.

2. In reply to the concluding para. of your letter, I am desired to observe, that the practice of two judges sitting together for the trial of regular causes, has been recently tried only to a very limited extent; a judge having a very intricate or important case has occasionally requested one of his colleagues to join him in the disposal of the same, and in such instances the practice has certainly been found to answer. The court, however, are of opinion, that it would not be advisable to introduce the practice generally. The statement herewith submitted shows that a great majority of the cases are decided by single voices, which would lead to the conclusion, that had double sittings been required for each case, the business of the court would have been much heavier than it now is; besides which, it appears to the court that a judge would come to a much more satisfactory decision in a case which must be tried upon record, when permitted to take his own time, and to pursue his own method of mastering its details.

I have, &c.

Fort William, 26 November 1841. (signed) *J. Hawkins*, Register.

STATEMENT of Suits decided by the Judges of the Sudder Dewanny and Nizamut Adawlut, severally and in concurrence, from the 1st January 1840 to the 31st August 1841, both dates inclusive.

	CIVIL SUITS.			Number of Opinions recorded on undecided Suits.
	Miscellaneous Cases.	Regular and Special Appeals decided on Trial.	Regular and Special Appeals otherwise disposed of.	
January - - 1840	634	16	5	15
February - - „	563	26	2	2
March - - „	304	11	4	5
April - - - „	791	24	3	6
May - - - „	806	33	5	8
June - - - „	667	53	4	17
July - - - „	768	61	3	25
August - - „	688	31	1	40
September - - „	590	46	3	29
October - - „	194	1	1	4
November - - „	656	43	7	28
December - - „	954	55	7	46
January - - 1841	684	30	12	20
February - - „	393	33	3	38
March - - „	370	18	4	18
April - - - „	778	46	8	30
May - - - „	578	33	2	33
June - - - „	285	60	2	28
July - - - „	567	34	10	39
August - - „	367	18	13	26
TOTAL - - -	11,547	672	89	457

SPECIFICATION of Regular and Special Appeals decided by Single Judges.

	January 1840.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	January 1841.	February.	March.	April.	May.	June.	July.	August.	TOTAL.
Mr. R. N. Rattray	3	–	2	2	2	5	3	3	3	–	4	–	1	–	3	7	4	4	4	–	50
„ C. Tucker -	2	1	–	1	2	–	–	–	3	–	–	–	–	3	–	–	–	9	–	–	21
„ A. Dick -	1	7	3	14	10	6	8	5	5	–	–	4	2	2	1	2	–	3	4	3	80
„ E. Lee Warner	4	9	4	3	5	10	9	3	5	–	7	5	–	5	2	–	4	4	4	4	87
„ J. F. M. Reid	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	1	2	–	4	–	8
„ D. C. Smyth	–	–	–	–	3	11	9	1	9	1	9	11	9	10	2	12	4	9	–	–	100
„ T. C. B. Biscoe	–	–	–	–	–	1	13	3	10	–	5	9	–	–	–	–	–	–	–	–	31
„ R. Barlow -	–	–	–	–	–	–	–	–	–	–	–	–	–	2	1	–	3	10	9	3	28
TOTAL - -	10	17	9	20	22	33	32	15	35	1	25	29	12	23	9	22	17	39	25	10	405

SPECIFICATION of Register and Special Appeals decided by concurrent Opinions.

	January 1840.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	January 1841.	February.	March.	April.	May.	June.	July.	August.	TOTAL.
By two Judges -	4	2	1	3	9	16	19	7	7	–	16	17	15	4	7	17	9	13	6	4	176
„ three Judges -	1	5	1	1	2	3	8	5	3	–	1	7	2	6	2	3	6	7	3	4	70
„ four Judges -	1	–	–	–	–	1	2	3	1	–	1	–	1	–	–	4	1	1	–	–	16
„ five Judges -	–	2	–	–	–	–	–	1	–	–	–	2	–	–	–	–	–	–	–	–	5
TOTAL - -	6	9	2	4	11	20	29	16	11	–	18	26	18	10	9	24	16	21	9	8	267

		CRIMINAL TRIALS.	
		Number of Trials disposed of.	Number of Opinions recorded on decided Trials.
January - -	1840	30	1
February - -	„	28	2
March - -	„	47	4
April - - -	„	35	7
May - - -	„	28	5
June - - -	„	48	10
July - - -	„	42	14
August - -	„	54	10
September - -	„	55	15
October - -	„	31	11
November - -	„	42	7
December - -	„	73	11
January - -	1841	28	14
February - -	„	38	8
March - -	„	48	19
April - - -	„	64	2
May - - -	„	26	4
June - - -	„	58	7
July - - -	„	42	12
August - -	„	63	4
TOTAL - - -		880	173

SPECIFICATION of Cases decided by Single Judges.

	January 1840.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	January 1841.	February.	March.	April.	May.	June.	July.	August.	TOTAL.
By Mr. Rattray -	4	4	5	5	5	8	4	6	10	5	5	4	8	5	2	9	5	8	8	1	111
„ Braddon -	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	3
„ Tucker -	4	10	9	6	4	8	3	10	8	4	5	42	7	10	23	24	9	29	8	20	243
„ Dick -	2	3	8	9	3	4	6	3	7	2	7	2	2	4	1	4	–	–	–	3	70
„ LeeWarner	6	4	11	6	2	9	4	7	7	1	8	3	5	5	1	1	2	4	8	8	102
„ Reid -	–	2	4	2	2	–	–	–	1	2	–	–	–	2	1	1	–	1	7	8	33
„ Smyth -	–	–	–	–	3	9	13	10	10	9	7	9	1	5	5	4	2	4	–	–	91
„ Biscoe -	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
„ Barlow -	–	–	–	–	–	–	–	–	–	–	–	–	–	–	7	–	2	2	6	7	24
TOTAL - -	19	23	37	28	19	38	30	36	43	23	32	60	23	31	40	43	20	48	37	47	677

SPECIFICATION of Cases decided by concurrent Voices.

	January 1840.	February.	March.	April.	May.	June.	July.	August.	September.	October.	November.	December.	January 1841.	February.	March.	April.	May.	June.	July.	August.	TOTAL.
By two Judges -	7	4	8	4	6	7	10	15	10	7	6	11	3	5	3	16	3	7	2	10	144
„ three Judges -	2	1	1	2	3	3	2	3	2	1	3	1	1	1	3	2	3	3	3	6	46
„ four Judges -	–	–	1	1	–	–	–	–	–	–	1	–	–	–	–	–	–	–	–	–	3
„ five Judges -	2	–	–	–	–	–	–	–	–	–	–	1	1	1	2	3	–	–	–	–	10
TOTAL - -	11	5	10	7	9	10	12	18	12	8	10	13	5	7	8	21	6	10	5	16	203

(signed) *J. Hawkins*, Register.

No. 4.
On the Rules regarding Reviews of Judgment framed by the Sudder Court of Calcutta.

(No. 1873.)

From *F. J. Halliday*, Esq., Secretary to Government of Bengal, to *J. Hawkins*, Esq., Register of the Sudder Dewanny and Nizamut Adawlut.

Sir,

I AM directed by the Right honourable the Governor of Bengal, to acknowledge the receipt of your letter, No. 4168, of the 26th ultimo, with its enclosures, on the subject of cases disposed of by the Sudder Court.

2. The statement shows that of 672 regular and special civil appeals decided during the period in question, about two-fifths went before more than one judge, and that of these last, one-third went before more than two judges.

3. Of criminal cases decided, nearly a fourth went to more than one judge, and more than a fourth of these to more than one judge.

4. These results, the Governor agrees with the court, prove that it would be a loss of time to send each case to more than one judge in the first instance; but his Lordship would be glad to have the court's opinion whether it might not be properly established, that where a single judge found himself disposed to reverse or alter the judgment of the court below, he should always call in two other judges, and that the case should be then heard by the three sitting together, and be decided by them without any additional voices.

I have, &c.

(signed) *F. J. Halliday*,
Secretary to Government of Bengal.

Fort William, 21 December 1841.

(No. 125.)

From *J. Hawkins*, Esq., Register Sudder Dewanny and Nizamut Adawlut, to *F. J. Halliday*, Secretary to the Government of Bengal in the Judicial Department.

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner,
and J. F. M. Reid,
Esqrs., Judges.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1873, dated 21st ultimo, and in reply, to request that you will submit the following observations for the consideration of the Right honourable the Governor of Bengal.

2. In regard to civil cases, the court would suggest a modification of the plan mentioned in the fourth paragraph of your letter; they are of opinion that the rule mentioned in clause 3, section 6, Reg. XIII. 1810 (which has since been modified by sections 8 and 16, Reg. XXV. 1814), or some rule to the same effect, might advantageously be adopted. His Lordship will observe, that of the 267 cases decided by more than one judge, 176 were disposed of by two judges, while 91 required more than two voices. The court would therefore suggest, that if a single judge is of opinion that the decision or order of the lower court should be revised or altered, otherwise than in the manner stated in the latter part of clause 2, sect. 2, Reg. IX. of 1831, he should not pass any final orders thereon, but refer the case to a second judge of the court; should the two judges, on consulting together, concur in the same view of the case, they should proceed to decide it. In the event, however, of a difference of opinion between the two, they might then call in a third judge, and the case be then heard by the three judges sitting together, as suggested in your letter, and be decided by them without any additional voices. The court would recommend the adoption of a rule to the above effect under sanction of an Act of the Legislative Council; a resolution of the court might be considered as contravening the provisions of sections 8 and 16, Reg. XXV. 1814.

3. The court would not suggest any alteration in the present practice of trying criminal cases. The statement submitted to the Government with my letter of the 26th November last, refers to cases tried under circumstances very different from those which now exist. It required two judges to enhance any punishment awarded by the session judge, and accordingly every case in which a judge was of opinion that the punishment was inadequate, was necessarily sent on for another voice. One judge can always modify a sentence in favour of the prisoner; but under Act XXXI. of 1841, the power of enhancing punishment has been altogether taken away from the court; the number of cases requiring more than one voice has accordingly been greatly reduced, and it is probable that in future very

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very few cases, except those for capital offences, will be laid before more than one judge.

I have, &c.

Fort William, 21 January 1842. (signed) *J. Hawkins*, Register.

(No. 18.)

Legis. Cons. 21 Feb. 1842. No. 3.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 176, dated the 1st instant, submitting correspondence with the Sudder Court, respecting the manner in which the business of the court is disposed of by the judges.

2. In reply, I am desired to state, that the Right honourable the Governor-general in Council concurs entirely in opinion with the Right honourable the Governor of Bengal, that it would be a great improvement in the practice of the Sudder Court to establish, "that where a single judge found himself disposed to reverse or alter the judgment of the court below, he should always call in two other judges, and that the case should be then heard by the three sitting together, and be decided by them without any additional voices."

3. If, therefore, after full consideration, the Sudder Court should be of opinion that this improvement cannot be effected without an alteration of the law, his Lordship in Council requests that the judges may be called upon to frame and submit a draft Act for the purpose.

4. The original enclosures of your letter are returned herewith.

I have, &c.

Council Chamber, 21 February 1842. (signed) *F. J. Halliday*, Officiating Secretary to the Government of India.

(No. 515.)

Legis. Cons. 20 May 1842. No. 7.

From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, Judicial Department; dated 2 May 1842.

Sir,

IN compliance with the requisition conveyed by Mr. Maddock's letter, No. 18, dated the 21st February last, I am directed by the honourable the Deputy-governor of Bengal to transmit, for the information of the Supreme Government, the accompanying original letter, No. 993, from the register of the Sudder Dewanny Adawlut, dated the 26th March last, submitting the draft of an Act, "to regulate the sittings of the Courts of Sudder Dewanny Adawlut."

2. The return of the original documents is requested when no longer required.

I have, &c.

Fort William, 2 May 1842. (signed) *F. J. Halliday*, Secretary to the Government of Bengal.

(No. 993.)

Legis. Cons. 20 May 1842. No. 8.

From *J. Hawkins*, Esq., Register Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal in the Judicial Department, Fort William; dated 26 March 1842.

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner and
J. F. M. Reid,
Esqrs., Judges.

Sir,

I AM directed to acknowledge the receipt of your deputy's letter, No. 343, dated 12th instant, and to forward to you, to be laid before the Right honourable the Governor, the draft of an Act of the nature indicated, as the court still consider that a legislative enactment is necessary to alter the present practice.

2. The original enclosures are herewith returned.

I have, &c.

Fort William, 26 March 1842. (signed) *J. Hawkins*, Register.

DRAFT

No. 4.
On the Rules regarding Reviews of Judgment framed by the Sudder Court of Calcutta.

DRAFT of An Act to regulate the Sittings of the Courts of Sudder Dewanny Adawlut.

IT is hereby enacted, in modification of section 16, Regulation XXV. 1814, that when a single judge of the Sudder Dewanny Adawlut, trying a case in appeal, regular or special, from any subordinate court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other judges of the court to sit with him, and that the appeal shall be then heard by the three judges sitting together, and be decided by them without any additional voices; in such cases, the decree or final order shall be signed by the three judges, if they agree together; but if one of them dissent from the view taken by the majority, by the two judges who agree together; and the signature of the third judge shall not be considered requisite, but his opinion shall be recited in the decree or final order.

2. Provided that the above rule shall not be applicable to summary appeals, or to appeals in miscellaneous cases; nor shall it be held to interfere with the powers of a single judge of the Sudder Dewanny Adawlut under clause 2, section 2, Regulation IX. 1831.

(signed) *J. Hawkins*, Register.

FORT WILLIAM, Legislative Department, 20 May 1842.

Legis. Cons. 20 May 1842. No. 9.

THE following draft of a proposed Act was read in Council for the first time on the 20th May 1842.

Act No. —— of 1842.

AN ACT to regulate the Sittings of the Courts of Sudder Dewanny Adawlut.

1. IT is hereby enacted, in modification of section 16, Regulation XXV. 1814, that when a single judge of the Sudder Dewanny Adawlut, trying a case in appeal, regular or special, from any subordinate court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other judges of the court to sit with him, and that the appeal shall be then heard by the three judges sitting together, and be decided by them without any additional voices. In such cases, the decree or final order shall be signed by the three judges, if they agree together; but if one of them dissent from the view taken by the majority, by the two judges who agree together; and the signature of the third judge shall not be considered requisite, but his opinion shall be recited in the decree or final order.

2. Provided that the above rule shall not be applicable to summary appeals, or to appeals in miscellaneous cases; nor shall it be held to interfere with the powers of a single judge of the Sudder Dewanny Adawlut, under clause 2, section 2, Regulation IX. 1831.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India, after the 20th day of July next.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. 45.)

Legis. Cons. 20 May 1842. No. 10.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 20 May 1842.

Sir,

I AM directed by the honourable the President in Council to acknowledge the receipt of your letter, No. 515, dated the 2d instant, with its enclosures, and in reply, to enclose the accompanying copy of a draft of an Act to regulate the sittings of the Courts of Sudder Dewanny Adawlut, this day read in Council for the

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the first time, for any observations the honourable the Deputy-governor of Bengal may be desirous to make on its provisions, in communication with the judges of the Sudder Court.

2. The original enclosures of your letter are returned herewith.

I have, &c.

Council Chamber, 20 May 1842.

(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

The same, to the Secretary to the Government of the North Western Provinces, omitting the words underlined.

(No. 984.)

Legis. Cons. 26 Aug. 1842. No. 8.

From the Officiating Deputy-secretary to Government of Bengal in the Judicial Department, to the Officiating Secretary to the Government of India, Judicial Department; dated Fort William, 25 July 1842.

Judicial Dep.

Sir,

In compliance with the requisition conveyed by your letter (No. 45), dated the 20th May last, I am directed by the honourable the Deputy-governor of Bengal to transmit, for the information of the Supreme Government, the accompanying letter from the register of the Court of Sudder Dewanny Adawlut, relative to the proposed Act for regulating the sittings of the court.

No. 2464 of 15th instant.

I have, &c.

(signed) *John S. Torrens,*
Officiating Deputy-sec. to the Government of Bengal.

Fort William, 25 July 1842.

P.S.—Please to return the enclosure when no longer required.

(No. 2464.)

Legis. Cons. 26 Aug. 1842. No. 9.

From the Register of the Sudder Dewanny Adawlut to *F. J. Halliday*, Esq. Secretary to the Government of Bengal in the Judicial Department; dated Fort William, 15 July 1842.

Enclosure. Sudder Dewanny Adawlut.
Present: R. H. Rattray, C. Tucker, E. Lee Warner, and J. F. M. Reid, Esqrs., Judges.

Sir,

I am directed to acknowledge the receipt of your letter, No. 804, dated 27th ultimo, and in reply to state, for the information of the honourable the Deputy-governor, that the draft of an Act to regulate the sittings of the Courts of Sudder Dewanny Adawlut, which accompanied it, corresponds with that recommended by this court. The court have no further remarks to offer respecting it.

I have, &c.

(signed) *J. Hawkins,*
Register.

(No. 1133.)

Legis. Cons. 2 Sept. 1842. No. 58.

From the Officiating Deputy-secretary to the Government of Bengal in the Judicial Department, to the Officiating Secretary to the Government of India, Legislative Department; dated Fort William, 22 August 1842.

Judicial Dep.

Sir,

I am directed by the honourable the Deputy-governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter, No. 2979, from the Court of Sudder Dewanny Adawlut, dated the 12th instant, forwarding rules regarding reviews of judgments under Act XVII. of 1841.

I have, &c.

(signed) *John S. Torrens,*
Officiating Deputy-sec. to the Government of Bengal.

Fort William, 22 August 1842.

(No.

(No. 2979.)

From the Register Sudder Dewanny Adawlut to *F. J. Halliday*, Esq., Secretary to the Government of Bengal in the Judicial Department; dated Fort William, 22 August 1842.

Legis. Cons. 2 Sept. 1842. No. 59. Enclosure.

Sir,

I AM directed to transmit the accompanying rules regarding reviews of the judgments of this court, in order that they may be submitted to the Supreme Government, and adopted under the provisions of Act XVII. 1841.

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner and J. F. M. Reid, Esqrs., Judges.

2. The rules, with the exception of the last, have been compiled from the various constructions and precedents of the court, and have in fact regulated its practice for some time past; it is not, therefore, so much to legalize them, as to give them permanent authority, that the court propose to extend to them the formal sanction authorized by the above-mentioned enactment.

3. The court consider the last of the rules to be in accordance with the spirit of the laws regarding reviews of judgment, and they think it highly advisable that the power of the court to review decisions which have been passed by it should be restricted to cases contemplated by the law as interpreted in the strictest sense, and thus the fullest possible authority be given to its judgments, and the greatest possible security be extended to property which is held under them.

Sect. 4, Reg. XXVI. 1814. Reg. II. 1825.

4. The Western Court have concurred in all the rules herewith submitted for consideration and orders.

I have, &c.

(signed) *J. Hawkins*,
Register.

RULES regarding Reviews of Judgment.

Legis. Cons. 20 Sept. 1842. No. 60. Enclosure.

ALL petitions for review of judgment to be accompanied by a copy of the order of which a review is applied for, or if the prayer of the petitioner have before been rejected, with copies (in addition to the original order) of the order or orders rejecting the review. Documents filed with applications for a review of judgment, under the provisions of section 4, Regulation XXVI. 1814, to be considered as exhibits, and made liable as such to the rule contained in Article 5, Schedule (B.), Regulation X. 1829, in the same manner as if they had been entered or filed on the proceedings of the original suit, or when it was before the court in appeal, whether regular or special.

13 Feb. 1835.

18 Nov. 1836. Cons. 1058.

No petition for a review of judgment to be read, unless there be indorsed thereon and signed by the party or his vakeel or mookhtar, duly authorized under the provisions of Regulation XII. of 1833, in the most concise terms, a statement of the grounds on which the review is considered to be admissible.

27 May 1836.

Petitions for review of orders rejecting applications for a review of judgment, provided they are presented within three calendar months from the delivery or tender of the decree appealed against, may be written on stamped paper of the value of two rupees; but if preferred after the expiration of that period, all such petitions must be written on stamped paper prescribed in Article 8, section (B.), Regulation X. 1829, with reference to the amount or value of the property adjudged against the party desiring the review, in like manner as if a regular appeal were preferred from such judgment, as required by clause 1, section 2, Regulation II. 1825.

1 Nov. 1833. Cons. 842.

On an application being presented for a review of judgment in a case decided by two judges, only one of whom continues attached to the court, it is to be laid before such remaining judge, whose decision as to the admission or rejection of the review is final.

Sec. 3, Reg. II. 1825.

On an application being presented for a review of judgment in a case decided by two judges, both of whom continue attached to the court, it is to be laid before the judges who passed the decree; in the event of a difference of opinion between them, as to the admission or rejection of the review, the matter to be referred for the opinion of a third judge.

8 Feb. 1833. Cons. 756.

The decision of a single judge on review of judgment passed by himself and another judge, the review having been admitted by both deciding judges, one of whom

16 March 1832. Cons. 683. whom left the court before the re-hearing on the review, is final and conclusive in the event of his confirming the former judgment.

When in a case decided by a single judge, the deciding judge shall have rejected an application for a review of the judgment, his rejection is to all intents and purposes final, unless he himself shall see grounds, on a subsequent application, to admit a review; and it is not competent to any other judge or judges of the court, at any subsequent period, to admit a review of the order rejecting the review.

16 October 1835. Cons. 982.

Review of a judgment passed by a judge or judges who are no longer attached to the court, or who are otherwise prevented from absence or other cause hearing the application, not to be admitted except by two concurring voices.

23 July 1841.

Fuquer Chuntridre v. Sumboo Chunder Ghose, 15 Aug. 1834. The decision of former or absent judges of the court cannot be overruled but by the concurring voices of a greater number of judges.

The opinions of former or absent judges recorded on the first decision, shall be taken into account in the final disposal of a suit after admission of review of judgment. In the event of a judge altering his own former judgment, such former judgment shall not be taken into calculation in the disposal of the case on the review.

31 Dec. 1841.

In a case in which the Court of Sudder Dewanny Adawlut has rejected an application for a special appeal from the decision of a zillah judge in appeal from the decision of a Principal Sudder Ameen, the Sudder Dewanny Adawlut may entertain an application from the zillah judge under the circumstances stated in clause 2, section 4, Regulation XXVI. 1814, for permission to review his judgment.

11 Nov. 1836. Cons. 1057.

The foregoing rules will not of course affect the power of the court under the provisions of section 3, Regulation II. 1825, in cases in which, with reference to the powers of a judge of the court, the decree may appear on the face of it to be imperfect and irregular.

31 Dec. 1841.

The order of a single judge, on an application for a review of the judgment of a former judge or judges (no application for a review having been preferred while such deciding judge or judges were attached to the court), rejecting the application, is final, and it is not competent to any other judge or judges of the court at any time to admit such review.

15 April 1842.

(signed) *J. Hawkins*, Register.

Legis. Cons. 2 Sept. 1842. No. 61. From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq., Secretary Indian Law Commission; dated 2 September 1842.

Legis. Dep.

Sir,

I AM directed by the honourable the President in Council to transmit to you, for submission to the Law Commissioners, the accompanying copies of a letter, No. 1133, dated the 22d ultimo, from the officiating deputy-secretary to the Government of Bengal, and of its enclosures, and to request that the Commissioners will favour the Supreme Government with their opinion on the rules regarding reviews of judgment framed by the Sudder Court for adoption under the provisions of Act XVII. of 1841.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Sec. to the Government of India.

Council Chamber, 28 Sept. 1842.

(No.——of 1842.)

Legis. Cons. 16 Dec. 1842. No. 7. From the Junior Secretary to the Government of India with the Governor-general, to *F. J. Halliday*, Esq. Officiating Secretary to Government of India, Legislative Department; dated Simla, 23 September 1842.

Sir,

I AM directed to transmit, for the information of the honourable the President in Council, the accompanying copy of a letter, dated 18th ultimo, from the Secretary to Government North Western Provinces, containing the opinions of the judges

judges of the Sudder Dewanny Adawlut, at Allahabad, and of Mr. H. H. Thomas, on the proposed Act for regulating the sittings of the Courts of Sudder Dewanny Adawlut.

I have, &c.
(signed) *C. G. Mansel,*
Junior Secretary to the Government of India,
with the Governor-general.

Simla, 23 September 1842.

(No. 1565 of 1842.)

From *R. N. C. Hamilton*, Esq., Secretary to Government North Western Provinces, to *T. H. Maddock*, Esq., Secretary to Government of India in the Legislative Department with the Governor-general; dated Agra, 18 Aug. 1842.

Legis. Cons. 16 Dec. 1842. No. 8. Enclosure.

Sir,

Judicial Dep.

In submitting the enclosed replies on the subject of Mr. Secretary Halliday's letter of the 20th May last (copy of which is enclosed for reference), one from the register of the Sudder Dewanny Adawlut, and the other from Mr. H. H. Thomas, lately an officiating judge of that court, I am directed by the Lieutennt-governor to request that you will draw the attention of his Lordship to the inconveniently short time allowed for the final consideration of the most important acts affecting these provinces.

2. The date fixed for the final consideration of the draft enclosed in the letter now acknowledged, is the 20th July; and it was only on the 1st July that the letter itself was received in this office, so that to collect the sentiments of the judges of the court whose proceedings the projected Act was intended to regulate, in time for transmission before the enactment should pass, according to the original intimation, was evidently impossible.

3. With regard to the draft itself, the Lieutenant-governor directs me to say, that he entirely concurs with the judges of the Sudder Dewanny Adawlut, in thinking it a most unadvisable enactment, one calculated to embarrass and impede the operations of the court, and consequently to obstruct and retard the admini tration of justice.

4. Under the existing system, every judge has the power to obtain the opinion of a colleague, if he thinks it advisable; and to shackle their discretion by making that obligatory which is now optional, appears to the Lieutenant-governor to amount to an interference in details, which of all things the Legislature ought to avoid.

I have, &c.
(signed) *R. N. C. Hamilton,*
Agra, 18 August 1842. Secretary to Government, N. W. P.

(No. 1 in No. 1565 of 1842.)

(No. 1391 of 1842.)

From *M. Smith*, Esq., Register to the Sudder Dewanny Adawlut, North We tern Provinces, Allahabad, to *R. N. C. Hamilton*, Esq., Secretary to the honourable the Lieutenant-governor in the Judicial Department, North Western Provinces, Agra; dated Allahabad, 30 July 1842.

Legis. Cons. 16 Dec. 1842. No. 9. Enclosure.

Sir,

Sudder Dewanny Adawlut, N. W. P. Present: B. Taylor, G. P. Thompson, and F. Currie, Esqrs., Judges.

I am directed by the court to acknowledge your letter (No. 1367) dated 19th instant, with draft of a proposed Act for regulating the sittings of the Courts of Sudder Dewanny Adawlut, on the provisions of which the sentiments of the court are asked, though it is apprehended at too late a period for their submission to the Supreme Government, with reference to the date fixed for the second reading of the draft already passed.

2. I am desired to state, however, that various objections present themselves in the view of the judges to the provisions of this draft, for which they cannot conceive any advantages contemplated to be derived from the law would compensate.

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3. In the first place, the court believe that it is a recognized principle (they quote from the minute of Mr. C. H. Cameron, recorded in 1838, on the means of educating for judicial officers), that "a plurality of judges is mischievous, because the disadvantage of dividing and breaking responsibility, outweighs the benefit resulting from the joint application of several minds to the same subject;" next, the delay which an observance of section 1, would occasion, appears to the court calculated materially to impede the despatch of business. It must be obvious that, to ascertain whether a decision ought to be reversed or altered, the judge who first takes up the case must go through the proceedings; having so done, he proceeds to call in two of his colleagues, who also go through the papers in the presence of the first judge, so that each case, so treated, must occupy the time of four judges, or of four cases, each tried by a single judge.

4. From the subjoined note of the mode in which the appeals of this court in 1840 and 1841 were disposed of, it will appear to what extent the time of a third judge would have been engrossed under the operation of the proposed law, where the expression of a third opinion was not then needed.

The number of decisions in 1840 was 189,

Of these, 105 were decided by 1 judge.
„ 57 - „ - 2 judges.
„ 24 - „ - 3 judges.
„ 3 - „ - 4 or more judges.

The number of decisions in 1841 was 149,

Of these, 77 were decided by 1 judge.
„ 41 - „ - 2 judges.
„ 22 - „ - 3 judges.
„ 9 - „ - 4 or more judges.

5. Lastly, the court are of opinion, that as far as regards the Sudder Dewanny Adawlut for the North Western Provinces, the law is not needed, the system in present force working successfully and well, and that its provisions must lie in abeyance during the portion of each year that a judge of the court is absent on a tour of circuit.

I have, &c.
(signed) *M. Smith*, Register.

Allahabad, 30 July 1842.

(True copy.)
(signed) *R. N. C. Hamilton*,
Secretary to Government N. W. P.

(True copy.)
(signed) *G. Mansel*,
Junior Secretary to the Government of India
with the Governor-general.

(No. 2, in No. 1565 of 1842.)

Legis. Cons. 16 Dec. 1842. No. 10. Enclosure.

From *H. H. Thomas*, Esq. to *R. N. C. Hamilton*, Esq., Secretary to Government, North Western Provinces; dated Agra, 23 July 1842.

Sir,

In answer to your letter of the 19th instant, with draft of an Act to regulate the sittings of the Courts of Sudder Dewanny Adawlut, I have the honour to submit the following observations.

2. I do not perceive what object is to be gained by the passing of this Act. If the Legislature contemplates an accelerated decision of regular appeals, or, if it conceive that better judgments will be given, both of these suppositions appear to me fallacious. Judges sitting together cannot but perplex and hinder each other; they necessarily talk over the case, the remarks of one distract another's attention; one judge has a quick comprehension, and soon makes up his mind; another, unable to reach conclusions with the same rapidity, pauses, and has the papers read afresh; the quick judge becomes impatient, and the slow judge grows confused. Then it may be remarked, that an inclination to be guided is not the peculiar

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peculiar character of feeble minds; even men of superior abilities, yielding to constitutional indolence, not unfrequently suffer their judgments to be overborne. Such men are compelled (whether as judges of a court or in other capacities, it matters not,) to combat their disposition, and to put forth their dormant powers when required to act unaided and alone. Suppose two judges called to give their opinions of a case which a third has been hearing and pondering, they would not be likely to give the same calm consideration to the proceedings, or to take the same pains to make themselves acquainted with the whole merits; they would be rather apt to seize the prominent features, and to deal with the rest in a summary fashion. In short, a judge sitting alone, with nobody to bewilder his understanding, or to warp his judgment, will do more to support the reputation of his court than he would ever effect by debating in committee with his colleagues. With these sentiments, therefore, I recommend that this Act be not passed, and that the practice regarding sittings which at present obtains in the Sudder Court at Allahabad, be not disturbed.

I have, &c.

Agra, 23 July 1842. (signed) *H. H. Thomas.*

(True copy.)
(signed) *R. N. C. Hamilton,*
Secretary to Government, N. W. P.

(True copy.)
(signed) *C. G. Mansel,*
Junior Secretary to the Government of India,
with the Governor-general.

MINUTE by the Honourable *A. Amos.*

Sittings of North Western Sudder Court.

Legis. Cons. 16 Dec. 1842. No. 11.

1. WITH regard to the Lieutenant-governor's Minute, it appears that the usual period of two months was allowed for the passing of the Act. In point of fact we never pass Acts, though the prescribed time has elapsed, until we have received answers which we have called for, as deeming them important. Though the present draft was reconsidered on the 20th of July (two months after the North Western authorities must have seen it in the Gazette), we have been waiting for their answers till the present date (the middle of October), nearly five months since they were apprised of what was in contemplation.

The Lieutenant-governor's remarks about not legislating concerning details, are out of his province, and, as regards the present subject, so obviously inapplicable, as not to require particular examination.

It is a more important consideration, if on account of the absence of a judge on circuit, there must be a suspense of business. If, however, there is any thing in this objection, there must be a suspense of business now, whenever two judges do not agree. Besides, the objection supposes the court to have only three judges.

The statistical calculations appear to me to omit an important circumstance; viz. Have not all the cases decided by the three judges, been in fact previously heard by one, and then by two. If so, in the year 1840, 24 hearings by two judges would have been entirely saved; and as the two judges would have embraced opposite opinions, no doubt the 24 hears by the three judges, would have been very much lengthened in consequence. Again, all the hearings before four or more judges would have been saved. But what I conceive would probably have been the chief saving is, that very likely many of the cases decided by the two judges were cases of affirmance, and in which the single judge, if he had been bound to deliver his separate opinion, would have affirmed. But from mistrust of himself from a variety of causes (many of them probably objectionable causes), he has called in another judge. *Orig.*

But the question does not turn solely on the saving of hearings; in point of time a third (or fourth) hearing, which the existing practice requires, is, independently of loss of time, a source of great vexation and expense to suitors; and, moreover, when a decree of an inferior court is reversed, I think it is not too much to require that it should be done by three judges.

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This is the view of the subject which appears to me; but on the practical working of a mofussil court, I cannot be so good a judge as my colleagues. Having noticed that, on various occasions, the opinions sent us from the North West Provinces betray sentiments bordering on intemperance, and that in the case of the Succession Act, and in various other instances, they have stated in the strongest manner arguments which they have founded on their settlement, but the total inapplicability of which they have been afterwards compelled to admit; I am disposed to weigh with caution the premises from which their conclusions are drawn, and when they are not sent to us, to request that they be transmitted.

9 October 1842. (signed) *A. Amos.*

Legis. Cons. 16 Dec. 1842. No. 12.

From *F. J. Halliday* Esq., Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq., Secretary to Government of India with the Governor-general; dated 16 December 1842.

Sir,

Legis. Dep.

I AM directed by the honourable the President in Council to transmit to you, in order to its being laid before the Right honourable the Governor-general for his assent, under clause 70 of the Charter Act, the accompanying draft Act for regulating the sittings of the Sudder Courts of Calcutta and Allahabad.

2. The discussions out of which the proposition for this draft arose, began from a despatch of the honourable Court, dated 5th June 1839. A project had been under consideration in the previous year, for relieving the Sudder Courts from the executive duty of superintending the administration of civil and criminal justice, and confining them to their judicial functions as the courts of the highest jurisdiction, transferring the duty of superintendence to a distinct authority. The Supreme Government had disapproved of the suggestion, and the honourable Court agreed with the Supreme Government on the subject, and directed that the duty of executive superintendence, like those duties which belong to the court in its judicial capacity, should be divided among the several judges, so as to be carried on with promptitude, efficiency, and an adequate sense of personal responsibility. This was communicated to the Government of Bengal, and it was requested by the Government of India, that the report which the Sudder Court of Calcutta might make on the subject of this distribution of business, might be communicated for their information.

3. This occasioned a more general inquiry by the Government of Bengal, into the state of business in the Sudder Court, which was then far from satisfactory, and in the end the Government of Bengal proposed to the Supreme Government a scheme of distribution of business which was approved by the Supreme Government, and carried into effect. In laying these propositions, however, before the President in Council, the Deputy-governor of Bengal made the following remarks:—

"There is a prominent fault, the Deputy-governor thinks, in the mode of procedure in the Sudder Court, as respects the trial of regular and miscellaneous appeals, which must be thoroughly remedied before it can be rendered as efficient as it ought to be, and to which, indeed, is to be in a great measure ascribed the present remarkable arrear of business which threatens, unless speedily provided for, to render the Sudder Court almost useless for the purposes for which it is constituted.

"The fault to which the Deputy-governor alludes, consists in an undue exercise of the powers conveyed by clause 6, section 2, and clause 7, section 4, Regulation IX. 1831, which authorize a single judge to refer to one or more judges any case which may seem of such a nature as to require more than one opinion.

"The consequence of this is, as his honour is informed, that cases are often sent from judge to judge all round the court, to the great interruption of other business, to the grievous vexation of the parties concerned, and sometimes it would seem, without obtaining for the case after such protracted deliberation, the advantage of any definite decision.

"An example of this mode of procedure is given in a letter to the Government of Bengal, from the secretary to the Sudder Board of Revenue, under date 27th March last, which is forwarded with this despatch, and which details the manner

in

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in which a case decided first by Mr. D. C. Smyth, in August 1835, was brought, in consequence of an application for review, before eight judges in succession, some of them hearing it twice. It will be seen that the tour of this case commenced in January 1836, and closed apparently on the 30th May 1838, but no final order had been issued in March 1839, and as far as the Deputy-governor is informed, no final order has been issued to this day.

"This system is not confined, his honour understands, to civil cases, but obtains also in criminal trials; and the Deputy-governor has been lately informed, that a criminal appeal of peculiar urgency presented to the court some months back, and relating to a complaint of illegal duress, has already travelled to five judges, is yet to be heard by a sixth, and is very likely to be sent, in case of the opinion of the sixth judge not fully according with those of his colleages, to undergo a second circuit in the Sudder Court of Allahabad.

"Two modes of remedying this mischief have suggested themselves to the Deputy-governor, and I am directed to submit both to the consideration of the Supreme Government. The one to alter the law in such manner as to make each single judge decide finally, and, without the power of further reference, all cases that may come before him, in which, under the general Regulations, he is competent to pass final orders singly, the other, to leave the power of reference in the hands of each judge, but to prescribe exactly the manner in which it shall be exercised; viz. that any judge requiring the assistance of his colleagues on any case or point of a case, should only obtain it by causing the case or the point to be heard and argued in open Court, before himself and two other judges sitting together, and that this full bench, so constituted, should finally decide the case or the point so referred to them, without the power of referring it further."

4. "The evil," it was replied, noticed in the above communication, "is one which may probably require legislative measures; his honour in Council is not prepared, in order to remedy the present inconvenience, to make so great a change in the established practice, as is involved in the first alternative proposition contained in the last para. of your letter; *viz.* to make each single judge decide finally, and without the power of further reference, all cases that may come before him, in which, under the general Regulations, he is competent to pass final orders singly, notwithstanding that he might, in the words of clause 6, sect. 2, Reg. IX. of 1831, in any case of difficulty or importance, deem it expedient and proper that the matter at issue should be tried by two or more judges of the court. His honour in Council would prefer postponing the consideration of all such substantial changes as this (which involves a principle of great importance on which there are wide differences of opinion), till the Law Commissioners submit their code of procedure.

"But the second alternative proposal of his honour the Deputy-governor seems to the President in Council to be fully calculated to meet the real evil, without being a substantial change of system. The evil, which is so strongly shown in the two cases (one a civil and one a criminal case) mentioned in your letter, evidently arises, not from the matter being referred to the decision of a plurality of judges, but from the manner of making that reference. The present method of sending one case to a number of single judges one after another, by causing the same suit to be placed in the same words, over and over again, indefinitely, necessarily entails much useless delay, vexation and expense to the parties; occupies very frequently the time of many more judges than necessary; and, by entirely sacrificing the advantage of consultation, leads, at last, to a very unsatisfactory result. To set against these disadvantages consequent to this system, when a case is originally referred to the whole court, there seems, to his honour in Council, to be no advantage whatever; and in other cases, the only advantage is the possibility of saving the time of one judge, if the second judge happens to coincide exactly with the first. In his honour's opinion it is likely, upon the whole, that there will be more time of the judges saved by making three the maximum number of judges to be consulted, in any case, than will be lost by making that number the maximum in all cases in which a single judge refers any matter for the opinion of one or more other judges; at all events the cases referred cannot fail to be expedited by such a method.

"It occurs to the President in Council that a similar inconvenience may be felt, in some instances, in the decision of appeals, (in which it requires the concurrent voices of two judges to reverse a decision regularly passed by a subordinate court, after a full investigation of the merits), to that which is represented in your letter

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to have arisen from the present method of reference to a plurality of judges in cases so referred, under clause 6, sect. 2, and clause 7, sect. 4, of Reg. IX. of 1831. This point will be further considered hereafter.

"His honour in Council accordingly proposes to transfer this question to the Legislative Department, and to consult with the Right honourable the Governor-general upon the subject. But it strikes him as possible that the object might be gained without a law, if the judges, agreeing in the views taken by the governments of Bengal and India, were to make it a public rule of court, that no judge shall refer any case, or any point in a case, to be decided by another judge or judges, otherwise than in the manner pointed out in your letter, and that when three judges sit together they shall give one joint judgment, to be determined, of course, by the voices of the majority, in cases of a difference of opinion. On this point, his honour in Council will be glad to be favoured with the opinion of the court."

5. The Sudder Court of Calcutta, who were called upon in consequence of this letter, replied, on the 28th February 1840, that a Legislative Act was, strictly speaking, necessary to introduce the alteration of practice suggested by the President in Council, but they proposed, previous to legislation, to try the effect of an understanding among themselves to adhere, in all practicable cases, to a course similar to that suggested by the Government. The court added, that they had already, in some instances, acted upon it, and they considered "that by an adherence to the plan, the expediency of which they fully recognize, as well as by the present mode of disposal of the English correspondence, the arrears of the court would in a short time be very materially diminished."

6. On the 19th of that month the Government of Bengal inquired into the progress of the experiment, and was answered in the following words: "The practice of two judges sitting together for the trial of regular causes, has been recently tried only to a very limited extent. A judge having a very intricate or important case, has occasionally requested one of his colleagues to join him in the disposal of the same, and, in such instances, the practice has certainly been found to answer. The court, however, are of opinion, that it would not be advisable to introduce the practice generally. The statement herewith submitted shows that a great majority of the cases are decided by single voices, and would lead to the conclusion that, had double sittings been required for each case, the business of the court would have been much heavier than it was. Besides which, it appears to the court that a judge would come to a much more satisfactory decision in a case which must be tried upon record, when permitted to take his own time, and to pursue his own method of mastering its details."

8. It was replied by Lord Auckland, that the statement submitted by the court showed, that of 672 regular and special civil appeals, decided during the period in question, about two-fifths went before more than one judge, and that of these last, one-third went before more than two judges.

9. Of criminal cases decided, nearly a fourth went to more than one judge, and more than a fourth of these to more than one judge.

10. These results the Governor agreed with the court proved, that it would be a loss of time to send each case to more than one judge in the first instance. But his Lordship desired to have the court's opinion, whether it might not be properly established, that where a single judge found himself disposed to reverse or alter the judgment of the court below, he should always call in two other judges, and that the case should be then heard by the three sitting together, and be decided by them without any additional voices.

11. The reply of the court was favourable to the proposition, but they made two suggestions for its modification; one, that a single judge deeming a decree fit to be reversed or altered, should first call in only one colleague, and if these two differed, then that a third should be called in. This plan seemed to threaten a waste of time in every case in which it might be eventually necessary to call in a third judge; besides this, it did not supply that weight of authority which, in all cases of reversal of judgments, is so desirable, and which can best be secured by the solemn trial of a case by a full bench of three; above all, it was not calculated to prevent the great evil of many various opinions which are now almost entirely caused by separate hearings, before every judge who sits upon a case. The other modification respected criminal trials, in which the Sudder Court desired to make no alteration of practice, nor for the present did the Supreme Government.

12. It

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12. It was replied, therefore, that the Right honourable the Governor-general in Council concurred entirely in opinion with the Right honourable the Governor of Bengal, that it would be a great improvement in the practice of the Sudder Court to establish, "that where a single judge found himself disposed to reverse or alter the judgment of the court below, he should always call in two other judges, and that the case should be then heard by the three sitting together, and be decided by them without any additional voices."

13. If, therefore, after full consideration, the Sudder Court should be of opinion that this improvement could not be effected without an alteration of the law, his Lordship in Council requested that the judges might be called upon to frame and submit a draft Act for the purpose.

14. The Sudder Court, in consequence, prepared a draft Act for the purpose, which is that now submitted for his Lordship's consideration.

15. The Sudder Court of Calcutta make no objection to the draft; it is, indeed, their own draft. The Sudder Court of Allahabad, Mr. H. H. Thomas, Judge of Benares, and the Lieutenant-governor of Agra, object strongly to the draft.

16. Their objections are all, except one, such as have already occurred, and been overruled in the discussions and correspondence mentioned in this despatch. For instance, it is objected to the draft by the Allahabad Sudder Court, that it is "a recognized principle that a plurality of judges is mischievous." The fact is, that "a plurality of judges" is the actual system of the Sudder Courts at present; in which it is proposed to make no substantial change, because the principle referred to is far from being recognized, but, on the contrary, is open to wide differences of opinion. The question of principle has not been touched upon, but left for the consideration of the Law Commissioners in the preparation of their code of procedure; the object of this draft being to regulate the existing system, and not to introduce a new one. At present the system, which is that of a plurality of judges, is open to every advantage of that system, and affords none of its advantages. Two voices, at least, are necessary to reverse any decision; and in every case a timid, or undecided, or ignorant, or indolent judge, may at his discretion share his responsibility with one or more of his colleagues, by sending his opinion to them for corroboration. In this there is certainly none of that benefit which is attributed to "single seated" justice; for in a great number of cases, the responsibility is of necessity broken and divided, and in all cases, any judge may divide it who pleases. But neither is there any of the advantage of consultation. The judges who thus divide the responsibility at present, do not sit together and apply their minds jointly to the same trial; the first judge tries the case, hears all the arguments, and unalterably records his opinion; the next hears the same case and the same arguments all over again, holds no consultation with his predecessor, but like him records his separate and unalterable opinion. If these separate opinions differ ever so slightly, the case goes to a third judge, and there is a third trial, a third hearing of vakeels, a third separate record of opinion. Thus sometimes to a fourth, a fifth, sixth, seventh, sometimes even to an eighth judge; when it is very likely that if the three first had really consulted together, their differences would have been reconciled, and the case long before decided.

17. This system, which detracts greatly from the weight of the Sudder Courts in public estimation, and which is extremely harassing and expensive to suitors, it is now proposed to bring under regulation. That which is now a nominal consultation, it is intended to make a real one. Where the law makes a plurality of judges necessary or discretional, it is the purpose of this draft to make the plurality effectual, and to the utmost attainable extent advantageous to the public.

18. The honourable the Lieutenant-governor's objection appears to the President in Council to be founded on a misconception. "Under the existing system," Mr. Robertson remarks, "every judge has the power to obtain the opinion of a colleague if he thinks it advisable; and to shackle that discretion by making that obligatory, which is now optional, appears to the Lieutenant-governor to amount to an interference in details, which of all things the Legislature ought to avoid." Nothing of the sort, his honour in Council observes, is indicated in the draft; it will not in the least alter the existing law in respect to the judges' discretion of referring cases to their colleagues, neither will it make any reference obligatory which is now discretional. But it will entirely alter the manner of reference; cases will no longer, under the name of "calling in a second judge," be

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be sent off to undergo a really new trial, or possibly two or three new trials, but when the judge desires to have, or by law ought to have, the assistance of his colleagues, he will sit with them on the same bench, try the case with them, hear the same arguments, consult with them throughout the investigation, and at its close, and finally have an open and manifest part in the decision which the full bench will pronounce.

19. It is true, that so long as there are only three judges in the Allahabad Sudder, the full bench of three will be unattainable during that small part of every year, when according to the experiment newly introduced, one judge is absent on circuit. To this extent, there may be difficulty in realizing the full benefit of the draft Act during a part of every year. This may perhaps, be a reason for always having four judges in that court, or it may be an argument against circuits by its judges, a system for which the Sudder Courts were certainly never intended. But it is not, in the judgment of the President in Council, any good reason for denying to the people the advantages of the draft Act during all the rest of the year; and his honour would therefore recommend, that the Act extend to the Allahabad Court, notwithstanding the objection.

I have, &c.

(signed) *F. J. Halliday*,

Officiating Secretary to the Government of India.

Fort William, 16 Dec. 1842.

Legis. Cons. 1 Feb. 1843. No. 1.

From the Indian Law Commissioners, to the Honourable the President of the Council of India in Council; dated 24 December 1842.

We have the honour to submit a Report upon the Rules regarding Reviews of Judgment framed by the Court of Sudder Dewanny Adawlut, at this Presidency, and referred to us by Mr. Officiating Secretary Halliday's letter of the 2d September last.

Sec. 4, Reg. XXVI. 1814. Sec. 2 and 3, Reg. II. 1825. Sec. 19, Reg. V. 1831.

2. By the Regulations of the Bengal code, a review of judgment may be applied for,—On the discovery of new matter or evidence which was not within the knowledge of, or could not be adduced by the party applying for the review at the time when the decree was passed;

Or to correct an evident error or omission in the decree;

Or when, for any other good and sufficient reason, it may be requisite for the ends of justice.

The application should be made within three months from the delivery or tender of the decree, but it is admissible after that period, if just and reasonable cause be shown why it was not preferred within the time limited in such case; however, caution is enjoined in the admission of it.

In the Court of Sudder Dewanny Adawlut, whenever the judge or judges who may have passed the decree, or if the decree have been passed by two or more judges, when any of such judges shall continue attached to the court at the time when the petition for a review is received, and shall not be precluded by absence or other cause, for a period of six months after the receipt of the petition, from considering and recording his order or opinion upon the same, it is not competent to any other judge or judges of the court to enter upon a consideration of the merits of the petition, and record an order or opinion thereupon. But this restriction is not applicable to cases not open to a further appeal, in which a single judge of the Sudder Court may appear, on the face of the decree, to have exceeded the powers vested in him. In such case, the decree being imperfect and irregular, it is competent to a majority of the judges concurring in opinion as to such irregularity, to proceed upon the petition.

3. On the first four of the proposed rules we have no particular remark to offer, except that the second clause of the 1st Rule, and the whole of the 4th Rule, will be unnecessary, if reviews of orders rejecting petitions for review are disallowed in future.

4. On the subject of the admission and rejection of applications for reviews:

The 8th Rule provides, that when in a case decided by a single judge of the court, the deciding judge shall have rejected an application for a review of the judgment, his rejection is to all intents and purposes final, unless he himself shall see grounds, on a subsequent application, to admit a review.

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The 5th, that on an application being presented for a review of judgment, in a case decided by two judges, only one of whom continues attached to the court, it is to be laid before such remaining judge, whose decision as to the admission or rejection of the review is to be final.

The 6th, that on an application being presented for a review of judgment, in a case decided by two judges, both of whom continue attached to the court, it is to be laid before such judges; and in the event of a deficiency of opinion between them as to the admission or rejection of the review, the matter is to be referred for the opinion of a third judge.

The 13th, that the order of a single judge, on an application for review of the judgment of a former judge or judges (no application for review having been preferred while such deciding judge or judges were attached to the court), rejecting the application as final.

The 9th, that review of judgment passed by a judge or judges who are no longer attached to the court, or who are otherwise prevented (from absence or other cause) hearing the application, is not to be admitted except by two concurring voices.

The foregoing rules, it is observed, will not, of course, affect the proviso contained in section 3, Regulation II. 1825, regarding cases in which, with reference to the powers of a single judge, the decree may appear on the face of it to be imperfect and irregular.

5. If we have apprehended correctly the purport of the above rules, an order rejecting an application for a review of a judgment of the Sudder Court is final under all circumstances, except in the case of a single judge desirous of admitting a review which he has once refused, of a judgment passed by himself singly.

6. We entirely concur in the sentiments of the court, as expressed in the 3d para. of their register's letter to the Secretary to the Government of Bengal, that it is "highly advisable that power of the court to review decisions which have been passed by it should be restricted to cases contemplated by the law, as interpreted in the strictest sense, and that thus the fullest possible authority should be given to its judgments, and the greatest possible security be extended to property which is held under them." As regards judgments of subordinate courts, the law seems to be clearly against entertaining any further petition for a review when one has been rejected, and we are not aware of any instance in which a subordinate court has appealed for permission to review a decree under such circumstances. As respects decrees of the Sudder Court, the law is not so precise, but it contains nothing which can be considered as countenancing such second applications.

7. It is incumbent on a party deeming himself aggrieved by a judgment, to use due diligence in the collection of new evidence, and in seeking advice on doubtful points of law, before he applies to the court for a review of it; and it is, of course, the judge's duty to give to such application, when made, all the consideration it may merit. To permit a review of the order which pronounces that application insufficient, would, it appears to us, hold out too great temptation to carelessness, both in the party and the judge. We would therefore suggest, that the liberty allowed to a single judge by the 8th Rule, to admit a review on a second application, be withdrawn. With this exception we consider these rules right and proper.

The Bombay Code allows only one review of a decree, clause 3, sect. 71 & 96, Reg. IV. 1827.

8. There is, however, one case in which we think a second application for a review ought to be admitted, without impeaching the order by which the first may have been rejected. We allude to the case in which, after an application for a review, whether on the ground of error in law, or fresh evidence, has been rejected, new evidence is discovered which had previously eluded the most diligent search of the applicant. If the application founded upon such new evidence is made within reasonable time after the discovery thereof, we think it ought not to be rejected because the party has previously made an unsuccessful application for a review on what was essentially a different ground.

9. As to the manner in which, after review admitted, the opinions of reviewing judges, and of the judges who tried the appeal, are to be estimated.

The 7th Rule provides that the decision of a single judge, on review of judgment passed by himself and another judge, the review having been admitted by both deciding judges, one of whom left the court before the rehearing on the review, is final and conclusive, in the event of his confirming the former judgment.

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The 10th, that the decision of former or absent judges of the court cannot be overruled but by the concurring voices of a greater number of judges.

The 11th, that the opinions of former or absent judges recorded on the first decision, shall be taken into account in the final disposal of a suit after admission of review of judgment; but that in the event of a judge altering his own former judgment, such former judgment shall not be taken into calculation in the disposal of the case on the review.

10. We see reason to dissent from the principle on which these three rules are framed; assuming that review will not be allowed but for weighty reasons, the very admission of a review implies at least a strong probability that justice has not been done by the first decision, whether the failure has been occasioned by a misapprehension of the law on the part of the judge, or the previous ignorance on the part of the applicant of certain evidence favourable to his claim; and it matters not whether the review has been sanctioned by the judge or judges who passed the first decision, or by other judges, when the opinions of the former were no longer available.

11. What might eventually have been the sentiments of an absent or deceased judge, whose opinion had contributed to the first decision, had an opportunity been allowed him of revising that opinion with the advantage of fresh arguments on the law, or fresh evidence as to the facts, it is of course impossible to tell, and therefore his opinion ought not to be taken into account in the final judgment. The opinion of a judge who, after admitting a review from his own judgment on a point of law, may have quitted the court or died before the re-hearing, should, if calculated at all, be counted against rather than in favour of the first decision.

Sudder Dewanny Reports, vol. 3, pp. 234-239, 5 July 1823.

12. The unsoundness of such a principle in the case of fresh evidence, may be illustrated by the decision of the court in the case of Baboo Sheodas Narain, Appellant, *against* Kinwal Bass Koomer and others, Respondents. In this case the claim of the appellant (plaintiff) was founded solely on a deed of gift, which by two judges of the court was considered established, but by two other judges was deemed entitled to no credit. During a review, fresh evidence was taken relative to this deed, which, in the opinion of two judges, still left it in the predicament of a forgery, but in the judgment of another, previously favourable to its validity, attached greater credit to it; yet the opinion of a judge who had joined in the first decision, but had died before the admission of the review (though on a point of practice distinct from the merits, not objecting to it), was taken to constitute a majority conclusive against the authority of the deed. It may be remarked that the judge who on the first trial of the appeal was in favour of the validity of the deed, was still attached to the court.

13. On the whole, we are inclined to think that the clearest principle to assume in cases where a review has been admitted, would be to deal with the appeal as if no judgment had been passed upon it, in which case the opinion of one judge on the review will suffice to confirm the decree of a subordinate court in a regular suit, and the opinions of more than one will be necessary to reverse it.

14. We infer from the terms of the seventh Rule, that a judgment in review confirmatory of the previous decision of the court, is conclusive, and itself not open to any review, and there being nothing in the rules which would lead to a contrary inference, we apprehend the court would not admit a review of a judgment passed on a review, though opposed to the first decision. This, we think, a correct principle. The only exception, if such it be, would respect cases in which a single judge, in pronouncing a final decree, had exceeded the powers vested in him.

With regard to applications for reviews of the original judgment upon the ground of a discovery of new evidence, they of course do not fall within the description of a review of a judgment passed on a review, though they may happen to be made after there has been such a judgment, and whatever restriction it may be expedient to impose upon them must be imposed upon a different principle.

15. On the 12th Rule, declaring the power of the Sudder Court to permit a review of the judgment of a zillah court, having previously rejected an application for special appeal from such judgment, we have no remark to offer.

16. Impressed with the conviction that reviews of judgment ought not to be allowed but on the strongest grounds, we would beg to offer a few further observations on the subject, though not necessarily connected with the rules of practice before us.

17. By

No. 4.
On the Rules regarding Reviews of Judgment framed by the Sudder Court of Calcutta.

17. By the present law, as before stated, no application for a review is admissible after the lapse of three months from the delivery or tender of the judgment, however strong the grounds of it may be in other respects, unless just and reasonable cause be shown for the delay to the satisfaction of the court; but if any opinion can be formed of the practice of the court on this point from the two following reported cases, it would seem that the caution enjoined by the same law in admitting applications after the limited period, is not sufficiently attended to.* And as regards the discovery of new evidence as a ground of review, it is to be supposed that such new evidence only was contemplated, as the applicant could not, by using reasonable active diligence, have shown or adduced before the decree was passed. In the case of Rupchund Sahee and Mussamat Bibi, Appellants, *against* Iwan Lol Ray and others, Respondents, decided by the court on the 28th June 1820, a review was admitted on an application presented in April 1824, though no reason is assigned for the delay, nor any new evidence adduced which might not have been as readily furnished before the decision of the appeal. In the miscellaneous case of Hushenauth Banoorjea and others, Appellants, *against* Brijmohun Mutter and others, Respondents, a review of judgment refused in February 1823 was again applied for in May 1838, that is, after 15 years; and although the only new evidence offered seems to have been copies of two perwannahs from the collector's office, which, so far as appears, might have been attained whilst the case was pending, the ground on which the application was rejected is, that more than 12 years had elapsed since the judgment of which review was sought.

Sudder Dewanny Reports, vol. 5, pp. 169, 170.

Sevestre's Reports, vol. 1, pp. 49, 50.

18. In the case of the Collector of Bareilly (on the part of Government), Appellant, *against* Major Hearsey, Respondent, which suit was pending in its various stages from December 1820 to July 1823, the new evidence on which the review appears to have been granted in favour of the appellant was the testimony of a mohurrir of the collector's office, and of a chuprassee either of the same office or of the zillah court, respecting the publication of a notice of a postponed sale of an estate for arrears of revenue, a point which had been disputed from the commencement of the suit, and one on which it mainly turned.

Sudder Reports, vol. 3, p. 247.

19. We think it would be desirable, if convenient opportunity offered, to define by law, as strictly as possible, the grounds on which reviews of judgment may be allowed. "Any good and sufficient reason" are too large terms, and include reviews on points of fact as deducible from the evidence already recorded in the case. A like objection was experienced as to the grounds for special appeals, which was remedied by section 4, Regulation II. 1825. The rules of English courts of equity admit of a bill of review only upon error in law or new matter discovered, and the same is the case in the Bombay Presidency.

See the preamble.

20. We are also of opinion that the term of 12 years from the date of a judgment, recognized by the court as the extreme limit of time for the admission of a review, is much too long for such a purpose. Considering the great indulgence as to time allowed by the Company's Courts for the procuring of evidence in a dependency suit, we are disposed to think that one year would be sufficient in ordinary cases, but that the limit might be fixed at two years, with a view to include any special cases of temporary disability.

See clause 1, sect. 71 & 96, Reg. IV. 1837.
See the case of Hushenauth Banorjea and others, above cited.

21. We would further suggest, in consideration of the great delay and expense attending an appeal to Her Majesty in Council, that the proviso in section 3, Regulation II. 1825, which empowers a majority of the judges of the Sudder Court to proceed upon a petition for a review in cases not open to a further appeal, in which a single judge of the court has exceeded his powers, should be extended to cases open to appeal, but in which no appeal has been preferred.

We submit this our report for the consideration of your Honour in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Elliott.
H. Borradaile.

Indian Law Commissioners' Office,
24 December 1842.

(No.

* Since this report was drawn up, we have seen a late decision of the court, which indicates a greater strictness in this respect than was formerly observed. See the cases of Prem Singh and J. P. Wise, petitioners, p. 7, vol. 2, of Sevestre's Reports.

(No. 8 of 1843.)

Legis. Cons. 1 Feb. 1843, No. 2.

From the Junior Secretary to Government of India with the Governor-general, to *F. J. Halliday*, Esq., Officiating Secretary to Government of India, Legislative Department; dated Camp Sagun, 19 January 1843.

Sir,

Legis. Dep.

I AM directed by the Right honourable the Governor-general of India to acknowledge the receipt of your letter dated 16th December last, No. 324, with its enclosures, and in reply to transmit to you the accompanying assent of his Lordship to the "Act to regulate the Sittings of the Courts of Sudder Dewanny Adawlut," recorded under date the 8th instant.

I have, &c.

(signed) *C. G. Mansel*,
Junior Secretary to Government of India,
with the Governor-general.

Camp Sagun, 19 January 1843.

Legislative Department, Camp Sagun,
19 January 1843.

Legis. Con. 1 Feb. 1843. No. 3.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed "Act to regulate the Sittings of the Courts of Sudder Dewanny Adawlut," received from the honourable the President in Council in Mr. Officiating Secretary Halliday's letter dated 16th December 1842, No. 324, in the form and wording of the draft hereunto appended.

(signed) *Ellenborough*.

ACT No. II. of 1843.

Passed by the Honourable the President of the Council of India in Council, on the 1st of February 1843, with the Assent of the Right honourable the Governor-general of India.

Legis. Cons. 1 Feb. 1843. No. 4.

AN ACT to regulate the Sittings of the Courts of Sudder Dewanny Adawlut.

1. IT is hereby enacted, in modification of section 16, Reg. XXV. 1814, that when a single judge of the Sudder Dewanny Adawlut, trying a case in appeal, regular or special, from any subordinate court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other judges of the court to sit with him, and that the appeal shall be then heard by the three judges sitting together, and be decided by them without any additional voices. In such cases the decree or final order shall be signed by the three judges if they agree together; but if one of them dissent from the view taken by the majority, by the two judges who agree together; and the signature of the third judge shall not be considered requisite, but his opinion shall be recited in the decree or final order.

2. Provided, that the above rule shall not be applicable to summary appeals, or to appeals in miscellaneous cases, nor shall it be held to interfere with the powers of a single judge of the Sudder Dewanny Adawlut, under clause 2, section 2, Regulation IX. 1831.

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—No. 5.—

DRAFT SECTIONS TO BE ADDED TO THE SPECIAL APPEAL ACT.

Note.—The last document connected with the subject of these Papers is contained in the "Special Reports of the Indian Law Commissioners, ordered, by the House of Commons, to be printed, 12 August 1842."—Page 640.

From the Indian Law Commissioners to the Right honourable the Earl of *Auckland*, G.C.B., Governor-general of India in Council; dated 4 December 1841.

Legis. Cons. 20 Dec. 1841. No. 22.

WE were about to report upon the subject of special appeals, with reference to the draft Act published on the 19th July last, and the papers transmitted to us with Mr. Secretary Maddock's letter dated the 9th August, when we received the further papers transmitted to us by your Lordship's order on the 4th October.

Received 19 Aug. From Mr. Secretary Maddock, received 8 October.

2. In our report dated the 21st August 1840, upon the judicial courts in the Presidency of Madras, we took occasion to express our opinion that "all special appeals should be heard and determined by the highest court," and in the draft Act, submitted with our further report on this subject, dated the 10th July last, we introduced provisions to this effect. We, at the same time recommended, that the judges of the Sudder Adawlut, should be restrained from admitting special appeals upon any other grounds than those distinctly specified in clause 1, sect. 4., Reg. XV. of 1816, of the Madras code, corresponding with sect. 2, Reg. XXVI. of 1814, of the code of Bengal; that is to say, "unless the judgment shall appear to be inconsistent with some established judicial precedent, or with some Regulation in force, or with the Hindoo or Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest or importance not before decided by the superior courts."

3. From the papers furnished to us with Mr. Secretary Maddock's letter of 9th August, we understood, as did your Lordship in Council, that both the Sudder Courts at Calcutta and Allahabad were likewise of opinion, that special appeals should all be heard and determined by the chief court of appeal, and we learned that this opinion had been approved and adopted by the Supreme Government.

To Government of Bengal, 19 Oct. 1840, para. 5.

4. From the papers last furnished to us, we find, however, that the Sudder Court at Allahabad, although "they recognize the principle, that special appeals should lie only to one, and that the highest tribunal;" yet recommended that special appeals "from regular appeals tried by Principal Sudder Ameens, from decisions of the Sudder Ameens and moonsiffs," should be exempted, and left to be determined by the zillah judges. In this recommendation we observe the honourable the Lieutenant-governor of the North Western Provinces does not concur, but prefers that such appeals "should be cognizable only by the Court of Sudder Dewanny Adawlut, as likely to conduce greatly to sound and uniform administration of the law."

Letter from the Register, 9 July 1841, para. 15.

From Mr. Secretary Thomas, on 13 Sept. para. 6.

5. It appears that the Allahabad Sudder Court propose to leave the determination of special appeals to the zillah judges, as above stated, because they apprehend that by extending the grounds of special appeal as they recommend, the number of such appeals from decisions passed by the zillah judges themselves, in cases tried originally by the lower tribunals, will be enough to occupy fully the attention of the Sudder Court.

6. The question, then, that arises upon the suggestions of the Allahabad judges is, whether it is advisable to depart from the principle which is consented to by all who have expressed opinions on the subject; viz. that the final decision upon points of law should always be passed by the Sudder Courts, and that such decision should be passed judicially, and never, as heretofore, extra-judicially, upon occasional references touching cases partially reported, in order to admit of

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a greater latitude in the grounds of special appeal, with a view to the correction of alleged erroneous decisions upon the merits of cases which have already undergone examination by two courts in succession, as well as erroneous decisions upon the law applicable to them.

To Government of Bengal, 19 Oct. 1840, para. 10.

7. It is the opinion of your Lordship in Council, in concurrence with that of the Sudder Court at Calcutta, and that which we have expressed, and in agreement with the principle of the existing law of the Presidencies of Bengal and Madras, that a "special appeal should be admitted only for the trial of some special point or points of law, and that in the trial of the appeal, only that particular point should be investigated and decided."

By the Bombay code a special appeal is admissible "if strong probable grounds of grievance exist from whatever cause," Reg. IV. of 1827, sect. 99.

8. The Allahabad Sudder Court propose that a special appeal shall be admitted whenever, on a perusal of the decree of the lower court, there may appear strong probable ground, from whatever cause, to presume a failure of justice, with exception to "suits for personal property below 150 rupees." The honourable the Lieutenant-governor considers this too vague and indefinite, and recommends that a special appeal shall be admitted when the decree appears to be "incompatible with the recorded evidence."

9. We are not disposed to question that a system which provided for the interposition of the highest, and therefore presumably the best qualified tribunal, whenever there should be occasion to remedy injustice in individual cases, arising from the misunderstanding or perversion of evidence of subordinate judicatories, as well as to correct errors and remove doubts as to the law, would be more perfect than one which confined the attention of its superior judges to the latter object. But such perfection we cannot look to as attainable under present circumstances; and we are decidedly of opinion, that it is of infinitely more importance to provide effectually for a correct and uniform interpretation and administration of the laws, in which the whole community are concerned, than leaving the provision for that object incomplete, to open a second appeal whenever a party dissatisfied with the decree on the first is able plausibly to impugn its statement of the facts proved, or otherwise to allege a failure of justice. We say, to open a second appeal, for it appears to us that it will be the same in effect, since, if objections to the decree on the first appeal are admitted upon such grounds, we do not see how their relevancy and weight can be judged of without going into the case, and examining the evidence with almost as much care and attention as would be sufficient for a decision upon an appeal.

10. We conceive that it is quite impossible, from past experience, under a law which limited the grounds of special appeal to points of law and usage, to form an estimate, likely to be even approximately correct, of the number of special appeals that would come before the courts if the grounds were enlarged as proposed, still less of the labour that would fall upon the judges by their being obliged, in the hearing of applications for special appeals upon the new grounds, to go into an examination of the proceedings and evidence to the extent that would be necessary. But we apprehend that the additional business would not be very much less than if a second appeal were allowed regularly, as a matter of course.

11. Assuming, then, that it is not possible to combine the object which we deem secondary with that which we consider to be of the first importance, we think it clearly advisable to forego the former, and give all attention to making our arrangements complete for the accomplishment of the latter. For this end we recommend, as the basis of a general law, that special appeals shall be heard and determined only by the highest courts of the several Presidencies, and that such appeals shall never be admitted but for the determination of some point of law, or of usage having the force of law, or of judicial practice.

12. These terms will include questions touching the rejection or admission of evidence and the legal effect of the evidence admitted, and touching the settlement of the issues and the consequent shaping of the evidence; and we are of opinion, that the irregular rejection or admission of evidence, mistakes as to the legal effect of evidence, and in the settlement of the issues and consequent misdirection as to the evidence to be adduced, ought to be admitted as good grounds for a special appeal, as well as ignorance or misconstruction of the law or usage applicable to the case.

13. But in order that questions as to the legal effect of evidence may be fairly raised for the decision of the superior appellate court, it will be necessary that the courts below shall distinctly state in their decrees the words or facts proved, to which a certain legal effect is attributed, and generally it will be a point of the

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the first importance that the decrees shall be drawn up with the most careful attention to accuracy and precision.

14. To promote this object, we think it extremely desirable, that in cases decided by the zillah judges the judgment and the grounds of it should be written in English, to be translated, of course, into the vernacular language. We are of opinion, that a rule to this effect would greatly conduce to exactness in the judgments. The reasoning, we conceive, would be more strict and pointed, and the conclusions more determinate, while there would be less room for dispute or cavil upon them for ambiguity of expression.

15. We understand that a manifest and striking improvement in these points ensued from the enactment of Regulation XV. of 1816, of the Madras code, by which all the courts under English judges were directed to use the English language in their decrees.

16. It has always been our intention to recommend this measure for the Presidencies of Bengal and Bombay also; and we think it proper to do so on this occasion, with a view to facilitate the operation of the general law for special appeals, which we now propose.

17. Adverting to the draft Act for the Bengal Presidency, published on the 19th July, we observe that it provides for a second or special appeal to the Sudder Dewanny Adawlut "from all decisions passed on regular appeals," if the judgment "be consistent with some established judicial precedent, or involve some question of law, usage or practice upon which there may exist reasonable doubts;" and directs that the judge admitting an application for a special appeal shall reduce the point or points to be determined to writing, in the form of a certificate, and that the Court of Sudder Adawlut shall try and determine the point or points so certified, and no other point or part of the case.

Section 1.
Section 4.
Section 5.
Section 6.

18. But with reference to a practical objection raised by the Sudder Court at Calcutta, and with a view to prevent the chief courts of appeal from being overcharged with new business, recourse has been had to the expedient of vesting the zillah and city judges with the power of determining upon the admission or rejection of applications for special appeals, in all cases in which the decisions complained of shall have been passed by subordinate judges, leaving only applications for special appeals from the decisions of zillah and city judges to be determined upon by a judge of the Sudder Court.

From Register Sudder Dewanny Adawlut, Calcutta, 8 Jan. 1841.

19. We apprehend that there is no question in any quarter that the measure would be more perfect if it provided for applications for special appeals in all cases being determined only by a judge of the Sudder Court. This is our decided opinion, and we cannot but think that the proposed Act is likely, in a considerable degree, to fail in its purpose of bringing about uniformity of decision on points of law and usage, by leaving to the several zillah and city judges in so many cases, to determine independently and finally what are settled points, and what are unsettled and disputable.

20. By the provision in question it appears to us that not a very great deal of labour will be saved to the Sudder Courts. It is stated, that the number of petitions for special appeals disposed of in 1839 by the zillah judges subject to the Calcutta Court, was 1,238. The number of special appeals heard and determined by them was 748. It would not, we conceive, materially increase the labour of the court which had to decide upon a special appeal, if it had to determine upon the admission of it in the first instance, as the judge who heard the application would probably proceed to pass the final decision himself, if it were within the competency of a single judge, or would join in the decision, and so the attention given to the case at first would not be lost. What would be entirely saved is the labour of hearing the rejected petitions.

21. We submit the draft of an Act which has been prepared from the published draft, with the modifications necessary to adapt it to our views, and which we would recommend to be enacted for all the Presidencies.

22. We are not insensible of the importance of the points adverted to in paragraphs 10 to 14, of the letter from the Allahabad Sudder Court, with reference to the superintendence and control of the zillah and subordinate judges in the performance of their judicial functions. But it is to be observed, that the province of the Sudder Courts, as controlling boards, is apart and distinct from their jurisdiction in appeal, and is by no means confined within the same limits; and where a judge finds no ground for a special appeal, he may, however, call for the proceedings of the lower courts, when it appears to him that there has been a

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want of care and diligence, or that some irregularity has been committed in the investigation of the case, either on the original trial, or on the appeal, and may proceed to bring the matter before the court, in order that the functionary whose conduct he considers censurable may be admonished, or that a report may be made to Government according to the existing regulations. The object of providing efficient means for the superintendence and control of the provincial judicatories generally, is one to which we shall give particular attention in framing our general scheme of judicature and procedure.

Regulation II. 1801, sect. 7; Reg. V. 1803, sect. 38; Madras Reg. VI. 1802, sect. 39.

23. We proceed to submit to your Lordship in Council the following suggestions tending to uniformity of procedure, which have occurred to us in the review we have taken on this occasion of the rules prevailing in the several Presidencies.

24. By the Regulations of the Bombay code a second appeal is allowed of course, in all cases decided on the first appeal by assistant judges of Sudder stations within certain limitations,* to the zillah judge, and beyond them to the Sudder Dewanny Adawlut, and in all cases decided on the first appeal by assistant judges at detached stations, when the judgment confirms a decree for more than 1,000 rupees, or reverses or alters one for more than 500 rupees, the appeal lying to the Sudder Dewanny Adawlut, or to the zillah judge, as the amount involved in the suit may exceed or fall short of 5,000 rupees, and to the Sudder Dewanny Adawlut in all cases decided on the first appeal by zillah judges, when the judgment reverses that of an assistant judge, or confirms it for an amount not exceeding 5,000 rupees.

25. We would recommend that the present opportunity be taken to make the law of the Bombay Presidency conformable in this respect to those of Bengal and Madras, permitting only a special appeal, as above recommended, to the Sudder Dewanny Adawlut in the cases in which a second appeal now lies either to that court or to the zillah court. We would, however, accompany this provision with another, restraining the zillah judge from referring appeals from Principal Sudder Ameens to assistant judges. It does not appear to us to be fitting to subject the decision of the judges, vested with the highest original jurisdiction, to the revision and final judgment of any but the highest provincial tribunal.

26. By the Bombay code, the only suits in which zillah judges now have original jurisdiction are those which fall under sections 22 and 43 of Regulation III. 1827, but they are authorized to refer such suits to their assistants, and in practice, it appears† all are so referred. We are of opinion that it is unnecessary to continue this sole remainder of original jurisdiction to the zillah judges. We would recommend that it be transferred entirely to the senior assistant judge at both the Sudder stations and at the detached stations.

27. In our plan for the abolition of the provincial courts in the Madras Presidency, upon the principle of making no change not required for the accomplishment of the special object in view, we proposed that the original jurisdiction now exercised by those courts should be transferred with their other functions to the judges of the zillah courts. We had it in contemplation, however, to propose eventually that these courts should be entirely relieved from original jurisdiction; and from the further consideration we have given to the subject on this occasion, we deem it advisable that it should be done immediately. We now recommend, therefore, that in the enactment to be made for the reform of the Madras Courts, it be provided that all original suits now cognizable by the criminal courts, be in future cognizable by the assistant judges and Principal Sudder Ameens of the subordinate zillah courts, instead of the zillah judges.

Regulation V. 1831, sect. 24, Act XXV. 1837. Circular Order, 23 February 1838, to the Sudder Dewanny Adawlut Calcutta.

28. By the Bengal code, zillah judges are still vested with original jurisdiction, and the Principal Sudder Ameens are competent only to try suits filed in the zillah courts, and referred to them by the zillah judges; but it is not intended that the zillah judges shall commonly exercise original jurisdiction; and when they retain any original suits on their own files, they are required to record their reasons for so doing specially.

29. We

* Within 2,000 rupees if the decree confirm that of the lower court; within 1,000 rupees if it reverse it.

N. B.—By section 2, Regulation VII. 1831, any appeal from a native commissioner preferred to a zillah judge, may be referred to an assistant judge; and the original jurisdiction of the first class of native commissioners, now called Principal Sudder Ameens, is unlimited.

† On reference to the returns of 1838, we find that of the few original suits decided by European judicial officers (34 altogether), none were decided by zillah judges.

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29. We would recommend that the intention of Government expressed in paragraph 2, of Mr. Secretary M'Sween's letter, dated 26 August 1833, be now carried into effect, by the enactment of the provisions proposed in sections 41 and 42, Part II. of the code of Regulations proposed by Mr. Millett, omitting the special limitation in section 42, agreeably to section 1, Act XXV. of 1837. By the proposed enactment, the zillah judges will be relieved entirely from original jurisdiction, as we have recommended with respect to Madras and Bombay.

30. The general principle of our scheme for the Madras Courts vests the zillah judges with jurisdiction in regular appeals from the decrees of the assistant judges and Principal Sudder Ameens of the subordinate zillah courts in all cases tried by them originally. But there is an objection to following it out entirely, in the proposed transfer of the original jurisdiction of the provincial courts to those subordinate judges in suits above 5,000 rupees, with reference to the jurisdiction of the Privy Council. We would recommend, therefore, that in all cases in which the subject of action is of a value amounting to 10,000 rupees, and therefore liable to the jurisdiction of the Privy Council, the regular appeal shall lie to the Sudder Adawlut, and to the zillah judge in all cases in which the value at issue is less than that sum.

31. By Act XXV. of 1837, in the territories subject to the Bengal Presidency, appeals in original suits, tried by the Principal Sudder Ameens, when the value at issue exceeds 5,000 rupees, must be preferred to the Sudder Dewanny Adawlut. We are of opinion, that the appeal should lie to the Sudder Dewanny Adawlut in cases in which the value amounts to 10,000 rupees, for the reason above stated. In suits for a less value we would give the jurisdiction an appeal to the zillah judge, and we recommend that the said Act be modified accordingly.

32. Upon the same principle we would recommend that in suits for a value amounting to 10,000 rupees, tried and decided by Principal Sudder Ameens in the Bombay Presidency, the regular appeal shall lie to the Sudder Dewanny Adawlut, and not to the zillah judge.

33. The measures above proposed will render the laws of all the Presidencies uniform in some very important points, and put them as nearly on the footing on which we think they should stand permanently, as present circumstances seem to admit of; and so considerable a relief will be afforded to the Sudder Courts of Calcutta and Allahabad,* that their adoption it may be hoped will enable the judges as they stand at present to compass the hearing of all applications for special appeals, as well as the decision of all special appeals admitted.

34. We have followed the printed draft in treating of special appeals in regular suits only on this occasion; but we observe that it has been the practice hitherto to admit special appeals likewise in miscellaneous cases. If the proposed rules are approved, we shall submit our opinion on the expediency of extending them to such cases.

35. The subject of this report has an intimate connexion with that of the College of Justice, recommended in our report of the 31st October 1840. We shall report upon the establishment and organization of those institutions as soon as we have completed our Report upon Judicature in the Presidencies. In the mean time we wish it to be understood, that the recommendations we have now made respecting the Courts of Sudder Dewanny Adawlut, will probably receive important modifications when we are engaged in devising rules for those more powerful tribunals, which will consist of the judges of the Supreme Courts and of the Sudder Dewanny Adawlut, associated together.

We submit this our report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Elliott.
H. Borradaile.

India Law Commission, 4 December 1841.

DRAFT (A.)

* The number of regular appeals preferred in 1829 to the Sudder Dewanny Adawlut at Calcutta, was 177, of which by much the greater part, it may be assumed, would no longer lie to that court. The number of regular appeals received in the Allahabad Sudder Courts in seven months, from January to July of the current year, was 65, being in the proportion of about 108 per annum.

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DRAFT (A.)

IT is hereby enacted that from and after a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, from all decisions passed on regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage or practice, upon which there may be reasonable doubts.

2. And it is hereby enacted, that applications for special appeals shall not be admitted unless they are presented to the proper court as aforesaid, within the period limited for the presentation of regular appeals.

3. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.

4. And it is hereby enacted, that every application for a special appeal, duly presented to the court as aforesaid, shall be heard by a single judge of the court, in the presence of the special appellant, or his vakeel or agent; and it shall be competent to the judge, at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

5. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall, at the same time, reduce the point or points to be determined to writing in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court to be heard and determined in due course.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

7. And it is hereby enacted, that in every case of special appeals admitted as aforesaid, the Court of Sudder Dewanny Adawlut shall determine the point or points certified as above enacted, and no other point or part of the case whatever.

8. Provided, that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate.

9. And it is hereby declared, that the existing Laws and Regulations of the Presidencies of Bengal, Madras and Bombay, relating to special appeals, shall continue in force so far as they are not inconsistent with the provisions of this Act.

10. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted, and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

(signed) *J. C. C. Sutherland,*
Secretary.

FORT WILLIAM, Legislative Department, 20 December 1841.

Legis. Con. 20 Dec. 1841. No. 23.

THE following Extract from the Proceedings of the Right honourable the Governor-general of India in Council, in the Legislative Department, under date the 20th December 1841, is published for general information.

READ a second time the draft of a proposed Act, dated the 19th of July 1841, and published in the Calcutta Gazette on the 21st of the same Month, for amending the rules of special appeals.

Resolution.—The Right honourable the Governor-general in Council, Resolves, That the following amended Draft on the subject be republished for general information.

ACT

No. 5.
Draft Sections to be added to the Special Appeal Act.

ACT No.——, of 1841.

AN ACT for amending the Rules of Special Appeals.

1. IT is hereby enacted, that from and after the a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, from all decisions passed on regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage or practice, upon which there may be reasonable doubts.

2. And it is hereby enacted, that applications for special appeals shall not be admitted unless they are presented to the proper courts as aforesaid, within the period limited for the presentation of regular appeals.

3. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.

4. And it is hereby enacted, that every application for a special appeal, duly presented to the proper court as aforesaid, shall be heard by a single judge of the court, in the presence of the special appellant, or his vakeel or agent; it shall be competent to the judge, at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

5. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall, at the same time, reduce the point or points to be determined to writing in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course. Provided that it shall not be necessary to call for or refer to any part of the proceedings, the reading of which is not required for deciding the point or points of law stated in the certificate.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

7. And it is hereby enacted, that in every case of special appeal admitted as aforesaid, the Court of Sudder Dewanny Adawlut shall determine the point or points certified as above enacted, and no other point or points of the case whatever.

8. Provided that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate, provided that such amendment shall relate only to the point or points originally stated in the certificate; and it shall not be lawful for the court to receive or add any new point or points.

9. And it is hereby declared, that the existing Laws and Regulations of the Presidencies of Bengal, Madras and Bombay, relating to special appeals, shall continue in force so far as they are not inconsistent with the provisions of this Act.

10. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted, and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India after the 20th day of March next.

(signed) *T. H. Maddock*,
Secretary to the Government, India.

Legis. Cons. 20 Dec. 1841. No. 24. To Chief Secretaries to Governments of Fort St. George and Bombay, and Officiating Secretary to Government, N. W. P.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 20 December 1841.

Sir,

With reference to your letter, No. 1370, dated the 7th September last, with its enclosure, *I am directed* to transmit to you, for submission to the Right honourable the Governor of Bengal, the accompanying amended draft of a proposed Act for amending the rules of special appeals, this day read in Council, for any observation *his Lordship* may feel disposed to offer on its provisions in communication with the Judges of the Sudder *Court*.

I have, &c.

2. The original enclosure received with your letter is herewith returned.

I have, &c.

Council Chamber, 20 Dec. 1841.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. 91.)

Legis. Cons. 9 Dec. 1842. No. 14.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to Indian Law Commissioners; dated 9 December 1842.

Legis. Dep.

Gentlemen,

With reference to your Report on the Law of Special Appeals, under date 4th December 1841, which, together with the draft Act to which it relates, has been submitted for the consideration of the Right honourable the Governor-general, I am directed to request that you will, at your earliest convenience, submit for the consideration of the honourable the President in Council, drafts of Acts for introducing the amendments proposed in paragraphs 14, 24, 25, 31 and 32 of that Report.

I have, &c.

Council Chamber, 9 Dec. 1843.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

(No. 244 of 1842.—Judicial Department.)

Legis. Cons. 16 Dec. 1842. No. 13.

From *J. P. Willoughby*, Esq., Officiating Chief Secretary to Government of Bombay, to *T. H. Maddock*, Esq., Secretary to the Government of India in the Legislative Department; dated 3 February 1842.

Sir,

In acknowledging the receipt of your letter, dated the 20th of December last, No. 195, I am directed by the honourable the Governor in Council to transmit to you for submission to the Right honourable the Governor-general of India in Council, the annexed copy of a letter from the Register of the Sudder Adawlut, dated the 29th ultimo, submitting the opinion of the judges of that court in respect to the proposed Act for amending the rules of special appeals.

I have, &c.

Bombay Castle, 3 Feb. 1842.

(signed) *J. P. Willoughby*,
Officiating Chief Secretary to Government.

(No. 150 of 1842.)

Legis. Cons. 16 Dec. 1842. No. 14. Enclosure.

From *G. Grant*, Esq., Register Sudder Adawlut, to *J. P. Willoughby*, Esq., Officiating Chief Secretary to Government, Judicial Department, Bombay; dated 29 January 1842.

Sir,

Messrs. Marriott, Bell & Pyne.

I have the honour to acknowledge the receipt of your letter of the 3d instant, transmitting copy of one under date the 20th ultimo, from the Secretary to the Government of India in the Legislative Department, together with a printed copy

of

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Draft Sections to be added to the Special Appeal Act.

of a proposed Act for amending the rules of special appeal, and requesting that the judges would be pleased to submit to Government such remarks or suggestions as they might have to offer on the provisions of the said Act.

In reply, the judges instruct me respectfully to state, for the information of the honourable the Governor in Council, that the advantages of discussion and deliberation attendant on the course which, under the existing Regulations, provides that no special appeal shall be admitted or rejected excepting by a court composed of at least two judges, are so obvious, and have been so often upheld in discussions on the subject of reducing the number of the judges of the Sudder Adawlut, that they are strongly opposed to such authority being vested in a single judge, and would therefore respectfully recommend that no alteration be made in this part of adjudication.

I have, &c.
(signed) *G. Grant*, Register.

Bombay Sudder Adawlut,
29 January 1842.

(True copy.)
(signed) *J. P. Willoughby*,
Officiating Chief Secretary to Government.

(No. 229.)

From *Fred. Jas. Halliday*, Esq., Secretary to the Government of Bengal, to *T. H. Maddock*, Esq., Secretary to the Government of India, Legislative Department; dated 15 February 1842.

Legis. Cons. 16 Dec. 1842. No. 15.

Sir,

Judicial Dep.

In compliance with the requisition conveyed by your letter (No. 157) dated the 20th December last, I am directed by the Right honourable the Governor of Bengal to transmit, for the information of the Supreme Government, the accompanying letter, in original, No. 213, from the Register to the Sudder Dewanny Adawlut, dated 28th ultimo, submitting the court's observations on some of the provisions of the revised draft of proposed law for amending the rules at present in force in regard to special appeals, with suggestions.

I have, &c.
(signed) *Fred. Jas. Halliday*,
Secretary to the Government of Bengal.

Fort William, 15 February 1842.

P.S.—Please to return the enclosures.

(No. 213.)

From *J. Hawkins*, Esq., Register Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal in the Judicial Department, Fort William; dated 28 January 1842.

Legis. Cons. 16 Dec. 1842. No. 16. Enclosure.

Sir,

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
C. Tucker,
E. Lee Warner
and J. T. M. Reid,
Esqrs., Judges.

I am directed to acknowledge the receipt of the orders of Government, No. 44, dated the 4th instant, together with the revised draft of a proposed law for amending the rules at present in force in regard to special appeals; and request that you will submit the following observations on some of its provisions for the consideration of the Right honourable the Governor of Bengal.

2. The court would suggest, that in the fourth section "a single judge" be altered to "one or more judges;" the present wording of the section may possibly be construed as rendering it imperative on a "single judge" to decide upon all applications for the admission of special appeals. If this suggestion be adopted, a corresponding alteration must also be made in the concluding part of the section, as follows: "it shall be competent to the judge or judges at his or their discretion."

3. The court are of opinion that the words noted in the margin might advantageously be omitted in the 5th section. The English certificate would have been of great use had the powers of admitting special appeals been reserved by the Act to the zillah courts; but as no court but the Sudder Dewanny Adawlut will be competent to admit such an appeal, the court think the certificate might be dispensed with.

"In English, in the form of a certificate, which shall be translated."

4. The

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4. The court do not see the advantage of section 8, under its very general wording; it would appear to authorize some judges of the court to amend the certificate or order of other judges. They would recommend that this section be altogether omitted, or its object more explicitly stated.

5. Section 10 provides for special appeals admitted or pending at the time of the passing of the Act, but says nothing of applications for the admission of such appeals pending at the same periods in the zillah court. The court would suggest that the provisions of the section be extended to all such applications.

6. The court desire me to take this opportunity of requesting his Lordship's consideration of their remarks on the subject of appeals in summary and miscellaneous proceedings contained in my letter, No. 3897, of the 29th October last.

7. The letter of the Supreme Government on which the order of the Government of Bengal was indorsed, is herewith returned.

I have, &c.

Fort William, 28 January 1842. (signed) *J. Hawkins*, Register.

(No. 3897.)

Legis. Cons. 16 Dec. 1842. No. 17. Enclosure.

From *J. Hawkins*, Esq., Register Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq., Secretary to Government of Bengal in the Judicial Department, Fort William; dated 29 October 1841.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner and J. F. M. Reid, Esqrs., Judges.

I AM directed to acknowledge the receipt of your letter, No. 1567, dated 12th instant, enclosing the draft of an Act in connexion with the powers to be exercised by native judges, and to request in reply that you will submit the following observations for the consideration of the Right honourable the Governor of Bengal.

2. The court are of opinion that the 1st and 2d sections of the proposed Act should be adopted without any alteration.

3. In regard to the 3d section, the Court direct me to refer to the 6th paragraph of the Western Courts' letter, No. 520, dated 30th March 1839, a copy of which was forwarded with my letter to your address, No. 961, of the 19th April following, and to observe, that the principle referred to in this section is the finality of the judges' decree in April from the decision of the Principal Sudder Ameen, in cases ordinarily cognizable by the Sudder Ameen, but referred for special reasons to the Principal Sudder Ameen. This principle will cease to regulate the law of appeal in such cases, on the enactment of the proposed Act regarding special appeals, a draft of which accompanied your letter, No. 1229, dated 20th August last. Under such circumstances the court would recommend the omission of this section.

4. The court is of opinion, that the remaining sections of the proposed draft should be adopted as they stand, with one or two trifling corrections as to figures. In section 5, " Regulation XXII." should be " Regulation XXIII.," and in section 6, " section 4 and 5," should be substituted for " section 2," Regulation II. 1806.

5. With reference to the foregoing observations of paragraph 3, the court are of opinion, that the subject of appeals from interlocutory orders, and from orders in miscellaneous cases decided by the uncovenanted judges, should be fully considered and settled by some provision of the Legislature. The law of special appeal which it is proposed to enact, and by which the decision of special appeals will rest entirely with this court, refers only to appeals upon regular suits. It will, however, become a question whether interlocutory orders, and orders in miscellaneous cases decided by the native judges, must follow the same course of appeal, and whether in such cases it will be competent for parties to apply to this court for the admission of a special appeal in miscellaneous cases of whatever description.

6. The following are the existing rules for regulating appeals in such cases:—

1. The appeal from the orders of the moonsiff and the Sudder Ameen, lies to the zillah judge, whose decision is final.

2. The appeal from the orders of the Principal Sudder Ameen in cases below 5,000 rupees, lies to the judge, with a special appeal to this court.

3. The appeal from this order of the Principal Sudder Ameen in cases above 5,000 rupees, lies direct to the Sudder Dewanny Adawlut. This rule applies

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applies to all orders passed by the Principal Sudder Ameens in execution of their decrees in cases above 5,000 rupees which have not been appealed, or which having been appealed, the appeal has been rejected under clause 2, section 2, Regulation IX. 1831, without summoning the respondent, and an order issued to the Principal Sudder Ameen to proceed with the execution of his own decree. The rule does not apply to cases above 5,000 rupees which have been decided after admission of appeal, as the decrees are then the decrees of the Sudder Dewanny Adawlut, are forwarded to the judge for execution, may by him be referred under Act V. of 1836, for execution to the Principal Sudder Ameen, and would then come under the general rule of section 8, Act XXV. 1837.

4. In all other cases coming under the provisions of section 8, Act XXV. 1837, the appeal from the order of the Principal Sudder Ameen lies to the zillah judge, with a special appeal to this court.

7. The court are of opinion, that the existing rules should be generally retained. They observe, that as in all interlocutory orders and miscellaneous cases, the judge is the appellate authority in the zillah courts, any provision which should admit of an application to this court for a special appeal in such cases, would tend to overwhelm this court with such applications, even though very few of them might be admitted; and as all orders in miscellaneous cases (with the exception of those passed in execution of decrees which merely carry into effect the original intentions of the court passing the decree) are open to a regular suit, the court see no good reason for extension of the privilege of appeal in such matters; and they would accordingly propose the adoption of the following provisions by a legislative enactment:—

1. That the order of the judge on appeal from all interlocutory orders, and orders in miscellaneous cases, passed by the Sudder Ameen and moonsiffs, shall be final. This rule to include all orders passed by those officers in execution of decrees in cases originally tried in their courts.

2. That the order of the judge in appeals from all the interlocutory order and orders in miscellaneous cases, passed by the Principal Sudder Ameen in cases originally tried in the court of a moonsiff or Sudder Ameen, shall be final.

3. That the order of the judge in appeal from all interlocutory orders in suits below 5,000 rupees, and orders in miscellaneous cases, passed by the Principal Sudder Ameen, under the provision of section 8, Regulation XXV. 1837, shall be specially appealable to the Sudder Dewanny Adawlut.

8. Should his Lordship not approve of the general principle of the foregoing proposed rules, but be of opinion that the law of special appeals, proposed to be adopted by the draft not yet finally passed, should be extended to miscellaneous cases, it will be necessary to expunge the concluding part of section 6, of the draft which accompanied your letter under acknowledgment.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William, 29 October 1841.

(No. 374.)

From *R. N. C. Hamilton*, Esq., Officiating Secretary to Government of North Western Provinces, to *T. H. Maddock*, Esq., Secretary to Government of India, Legislative Department, Fort William; dated 28 February 1842.

Legis. Cons. 16 Dec. 1842. No. 18.

Sir,

Judicial Dep.

In reply to your letter, No. 196, dated 20th December last, I am directed to forward to you, for the purpose of being laid before the Right honourable the Governor-general in Council, the annexed copy of a letter dated the 4th instant, received from the register of the Sudder Dewanny Adawlut at Allahabad, stating that the draft of a proposed enactment for amending the rules of special appeals, bearing date 19th July 1841, is not calculated to modify the restrictions of which the court complained. Regarding the amended draft now transmitted, the court observe, that its provisions appear to be similar in spirit and intent, as to be equally open to the objections they conceived to exist to the first draft. Neither of them makes provision for cases of imperfect investigation, of erroneous decision, or

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or of manifest injustice, being confined to contingencies of opposition to, or the existence of doubts regarding law, usage and practice.

2. In these sentiments, I am desired to state his honour the Lieutenant-governor entirely and fully concurs.

I have, &c.

(signed) *R. N. C. Hamilton,*
Officiating Secretary to Government, N. W. P.

Agra, 28 February 1842.

ABSTRACT.

IN reply to letter, 20 December 1841, forwarding copy of letter from the Sudder Dewanny Adawlut at Allahabad, stating observations on the amended draft regarding special appeals; expressing concurrence of the Lieutenant-governor in the sentiments of the court.

(No. 303.)

From *M. Smith,* Esq., Register Sudder Dewanny Adawlut, Allahabad, to *R. N. C. Hamilton,* Esq., Officiating Secretary to the Honourable the Lieutenant-governor, in the Judicial Department, North Western Provinces; dated Agra, 4 February 1842.

SIR,

Sudder Dewanny Adawlut, N.W.P.
Present:
B. Taylor,
G. P. Thompson, Esqrs., Judges, and
H.H.Thomas, Esq., Officiating Judge.

1. I AM directed to acknowledge the receipt of your letter, No. 91, dated 12th ultimo, forwarding an amended draft of a proposed Act "for amending the Rules of Special Appeals," on which the court are invited to offer any observations they may feel disposed.

2. In reply, I am instructed to state that the judges of this court entertain objections to section 2, Regulation XXVI. 1814, for the reason that it imposes restrictions, which amount to the denial of substantial justice; and their arguments on this point were fully detailed in my letter of 9th July last, No. 1164, addressed to Mr. Secretary Thomason. The draft of a proposed enactment for amending the rules of special appeals, bearing date 19 July 1841, was not calculated to modify the restrictions of which the court complained; but having so recently recorded their opinion, they deemed any further remarks at that time superfluous.

3. Regarding the amended draft now transmitted, the court would only observe, that its provisions appear to be so similar in spirit and intent, as to be equally open to the objections they conceived to exist to the first draft. Neither of them makes provision for cases of imperfect investigation, of erroneous decision, of manifest injustice; being confined to contingencies of opposition to, or the existence of doubts regarding law, usage and practice. No further discussion of the subject would, however, seem to be requisite on the part of the court, nor could they add strength or clearness to their former observations.

I have, &c.

(signed) *M. Smith,*
Register.

Allahabad, 4 February 1842.

ABSTRACT.

OBSERVATIONS of court, states an amended draft of proposed Act regarding special appeals, which appears to them to be similar to first draft, and open to some objection on ground of defectiveness of provisions.

(True copy.)

(signed) *R. N. C. Hamilton,*
Officiating Secretary to Government, N. W. P.

(No.

(No. 128.)

From *H. Chamier*, Esq., Chief Secretary to Government, Fort St. George, to *T. H. Maddock*, Esq., Secretary to the Government of India; dated 25 February 1842.

Legis. Cons. 16 Dec. 1842. No. 19.

Sir,

1. I AM directed by the Right honourable the Governor in Council to acknowledge your letter in the Legislative Department, No. 194, dated 20th December 1841, and in reply, to transmit an extract from the proceedings of the Sudder Adawlut, conveying their opinion on the draft of the proposed Act for amending the Rules of Special Appeals.

Judicial Dep. Letter, dated 14 Feb. 1842. No. 24 (A.)

2. His Lordship in Council desires me to observe, that as the rules for the admission and disposal of special appeals are incorporated in the proposed draft Act of the Law Commissioners for the modification of the judicial system of this Presidency, it does not appear necessary to make the present Act applicable to this Presidency.

I have, &c.

(signed) *H. Chamier*,

Fort St. George, 25 February 1842. Chief Secretary.

(No. 24 A.)

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 14 February 1842.

Legis. Cons. 16 Dec. 1842. No. 20. Enclosure.

READ order of Government, dated the 10th January 1842, No. 31, transmitting for any observations they may desire to offer, the draft of a proposed Act for amending the Rules of Special Appeals.

1. Section 2 of the draft Act enacts, that applications for special appeals shall not be admitted, unless they are presented to the proper court within the period limited for the presentation of regular appeals.

2. The Court of Sudder Adawlut are of opinion, that there shall be the same discretionary powers to admit a special appeal after a limited period, on satisfactory cause being shown for the delay, as there is to admit a regular appeal.

3. Section 5 and 6 renders it competent to a single judge of the Court of Sudder Adawlut to admit or reject an application for the admission of a special appeal.

4. The Court of Sudder Adawlut are of opinion that two judges should agree, in order to the admission or rejection of a special appeal.

5. Vesting such power in a single judge is tantamount to creating three co-ordinate tribunals, the result of which will be a difference of practice, when the grand object of the measure is uniformity. In the opinion of the judges the collective court should have the same power over initiatory proceedings that it has under clauses 7 and 8, in respect to the determination of the points on which the special appeal was admitted.

6. The power of a single judge to refuse to admit a special appeal, is much the same in effect as the power to decide on the merits.

7. Section 7 enacts, that in passing judgment on a special appeal, the court shall confine itself to a consideration of the specified grounds on which it was admitted.

8. The Sudder Adawlut are of opinion, that though the court admitting the special appeal should not be bound to decide more than the points upon which the special appeal is admitted, that court should have the power to decide the whole suit.

9. According to the practice at present observed in this Presidency, when a special appeal has been admitted on certain specified grounds, it is considered imperative on the court, in passing judgment on such appeal, to dispose of those grounds in its decree; but a special appeal once admitted, it is held to be competent to the court, having disposed of the specific ground of objection to which the decree of the lower court appeared to be open, to take into consideration any other grounds that may have been advanced in the special appeal, and to enter fully into the merits of the case.

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Draft Sections to be added to the Special Appeal Act.

Ordered, That extract from these proceedings be forwarded to the chief secretary to Government, for the purpose of being laid before the Right honourable the Governor in Council.

(True extract.)

(signed) *W. Douglas*, Register.

(True copy.)
(signed) *H. Chamier*, Chief Secretary.

Legis. Cons. 16 Dec. 1842. No. 21.

From Mr. *J. Kirk*, Moonsiff, Ghazeepore, to the Honourable *A. Amos*, Esq., President of the Law Commission, Fort William; dated 21 March 1842.

Honourable Sir,

I RESPECTFULLY beg to enclose a draft of an Act drawn up by me about "Special Appeals," which in my humble opinion, with a few amendments, will answer every purpose, and admit of a repeal of all the existing enactments.

A very hard practice prevails in the mofussil, which I beg to bring to your notice.

A. lets a house to B.; the latter, unless he chooses, cannot be ousted without a regular suit; whereas he can leave whenever he thinks proper, unless an agreement exists. To remedy the glaring evil, and prevent litigation and the ruination and trouble to many, something of the following sort would answer.

If the tenant is proved by a regular suit to owe rent to his landlord, and does not pay, he can be summarily ousted when the decree is being executed.

Again, the landlord wishes his tenant to quit, a notice should be served through the judge's or moonsiff's court, calling upon the latter to leave, or show cause within 15 days, after which, unless sufficient ground is proved, to be summarily ejected.

When the Act regarding moonsiffs, &c. is being passed, a clause ought to be inserted, modifying clause 6, section 14, Regulation XXVI. of 1814, to allow the courts to exercise a discretion with regard to the previous deposit of tulband; it would much facilitate business; for, as now the process cannot be issued without the deposit, and which in every instance causes a delay of a week or a fortnight, the modification would only countenance what is now daily covertly done to get on with business; that is, the process is issued on the responsibility of the vakeel or agent (and no complaint is ever heard), who gives a note to the serving process peon to give to his client, who pays the demand which is written upon the back of the process.

In the proposed Act for moonsiffs, section 8, the words, "or the vakeel or officers of his court," admits of varied constructions. By officers of his court, the muckoory peons can be brought under that term. Again, just as a case is being about decided, aware of the turn the business is about to take, a party comes forward and states that such a vakeel or officer is related to such a plaintiff or defendant; the case must be postponed until further inquiry, or a reference is made to the judge, for half of them are related to each other; therefore, the words ought to be quite explicit to admit of no quibbling, such as "or the vakeels or permanent and paid ministerial officers personally parties."

I am, &c.
(signed) *James Kirk*, Moonsiff.

Ghazeepore, 21 March 1842.

AN ACT for amending the Rules of Special Appeals.

1. CLAUSE 1, section 28, Regulation V. of 1831, and section 6, Act XXV. of 1837, are hereby modified.

2. It is hereby enacted, that from and after the a special shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Dewanny Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, and to the zillah and city judges, from all decisions passed, or regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law,

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or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage or practice upon which there may be reasonable doubts, or when the judgment against which the appeal is preferred, shall, from the exhibition of another decree of the same court, or of another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, clearly appear to be in opposition thereto, or inconsistent with such other judgment.

3. And it is hereby enacted, that applications for special appeals shall not be admitted, unless they are presented to the proper court as aforesaid, within the period limited for the presentation of regular appeals.

4. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case, and such application shall be written upon the stamped paper prescribed with reference to the value or amount of the suit, calculated according to the provisions for the valuation of property sued for in the civil courts. The application shall state distinctly the specific ground or grounds under which the special appeal is solicited, and shall be presented either by the party in person or by a pleader or agent. All exhibits filed with petitions for admission of special appeals, will not be subject to payment of fees.

5. And it is hereby enacted, that the judge of a zillah or city court is competent, in any case in which no further regular appeal is open under the existing Regulations, but in which either of the parties may be desirous of a further special appeal, to certify to the superior court (when the circumstances demand it) that such case involves some point of general importance hitherto apparently unsettled, and fit to be reconsidered in a further appeal.

6. And it is hereby enacted, that it shall be competent to the Courts of Sudder Dewanny Adawlut, in any case in which the special ground of appeal may appear to have been incorrectly or incompletely certified, to return the certificate for amendment, or in cases in which it may appear to have been improperly transmitted, to annul the certificate altogether, without requiring the attendance of the party or his vakeel or agent.

7. And it is hereby enacted, that every application for a special appeal, duly presented to the Sudder Court, shall be heard by a single judge of the court, in the presence of the special appellant or his vakeel or agent; and it shall be competent to the judge, at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

8. And it is hereby enacted, that if it shall appear to the judge of the Sudder Court that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall at the same time reduce the point or points to be determined, to writing in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course.

9. Provided, that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate.

10. And it is hereby enacted, in every case of special appeal admitted as aforesaid, the Courts of Sudder Dewanny Adawlut shall determine the point or points certified as above enacted, and no other point or part of the case whatever.

11. And it is hereby enacted, that if it shall appear to the zillah or city judge, or to the judge of the Courts of Sudder Dewanny Adawlut, that a special appeal is not admissible under this Act, he shall reject the petition; and his order so rejecting a petition for a special appeal shall be final.

12. If, on consideration of the circumstances of the case, the court shall see reason for admitting a special appeal, on any of the grounds stated in the 2d section, the appellant shall be required to furnish the prescribed security within a reasonable period, to be fixed by the court.

13. If the court shall reject the petition, the appellant shall not be entitled to receive back the amount or value of the stamp on which the petition may have been written. The courts are, however, vested with a discretionary authority, in any particular instance of hardship, to refund any portion not exceeding

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three-fourths of the amount of each stamp duty, to the party who may have paid the same, or to his legal representative.

14. The courts empowered to receive the special appeal in such cases shall be competent either to try the merits of the case, and pass a final judgment thereupon, or to refer the suit back for revision, and a further judgment by the court which shall have passed the original decision, or that given on the first appeal.

15. In the special appeals provided for by the foregoing sections, as well in all other appeals regular or special, under the Regulations in force, if the suit in appeal be referred back for further investigation and decision, without a judgment upon the merits of the case, the stamp duty paid by the appellant shall be returned to him.

16. Pleaders or agents to settle with their constituents the compensation to be made them for presenting such application or petition, and performing any other act connected therewith. The amount of the compensation which may be voluntarily agreed upon shall be specified in the Vakalut Nameh or Makhtarnameh. However, it shall be competent to the court to which the application may be preferred, to order the amount of the compensation agreed upon to be reduced, should it in any instance appear to be unnecessarily large or exorbitant.

17. In all suits decided by moonsiffs or Sudder Ameens, an appeal shall be made to the zillah or city judge, and a further or special appeal to the Sudder Dewanny Adawlut; but if appeals from their decisions be referred to and decided by a Principal Sudder Ameen, a special appeal shall lie only to the zillah or city judge.

MINUTE by the Honourable *A. Amos.*

Legis. Cons. 16 Dec. 1842. No. 22. Special Appeals.

I HAVE communicated some doubts entertained upon the subject of this Act to the Law Commission. They are all of opinion, that although it would be desirable that the Sudder should review every point of law or fact contained in a decree, yet that the practicability of such a course is quite out of the question, as is also that of allowing the Sudder to go into the whole case, upon an appeal being admitted on a matter; and that the latter practice (which has prevailed in the Lower Sudder of Bengal) is doubly objectionable, as being a manifest evasion of the Regulation prohibiting in special appeals any discussion upon matters of fact stated in a decree.

The number of causes actually tried by the moonsiffs in Bengal, for the year 1840, was 57,179 (fifty-seven thousand one hundred and seventy-nine); special appeals from these, as well as from the decrees of Principal Sudder Ameens, and Sudder Ameens, have hitherto stopped definitively with the zillah judges. The object of the Act is to provide for uniform constructions of law, in the place of the utmost uncertainty upon matters even of mere law, which has been notorious notwithstanding. Something has been done towards uniformity (though the law has in consequence been often misconstrued) by the irregular and by the Court of Directors' condemned practice of circular orders. To accomplish this object, we let in upon the Sudder Court the new liability of special appeals in these 57,000 cases, besides special appeals from Ameens, for the first time. All the Law Commission are decidedly of opinion, that the Act would be *felo de se* for want of adequate machinery, unless we restricted special appeals to the points contained in the appeal, not only in these new cases, but in all cases; for it is well known that the four judges of the Lower Sudder, assisted by three temporary judges having no original business, and for many purposes sitting singly, are some years in arrear with the list of appeals entered in their court. We shall thus secure uniformity of legal decision, which is otherwise impracticable; and the parties will, in a great multitude of cases, be able to obtain the opinion of the court of highest resort, instead of being confined, as at present, definitively to a special appeal stopping with the zillah judge.

7 May 1842. (signed) *A. Amos.*

MINUTE

Minute by the Honourable *H. T. Prinsep.*

Legis. Cons. 16 Dec. 1842. No. 23. Special Appeal Act.

The opinion of most of the authorities consulted is in favour of the Act proposed by the Law Commission for regulating special appeals, and I am disposed to give my entire concurrence to most of the principles and positions advocated in the Report with which it was sent up. There is one thing, however, that strikes me as inconsistent with the existing practice, both here and before the Privy Council; and as this practice has its origin in the defects of form and system which are exhibited by the existing decrees of our Indian courts, I doubt the possibility and expediency of enacting a change. What I refer to is this; at present, if a special appeal is admitted by the Sudder Dewanny Adawlut, which it can only be on some ground of law or court practice, the case is placed on the file of appeals, and the papers are sent for, pleadings taken, and the trial proceeded with exactly as of any other case.

That is, although the judge deciding on the admission of the appeal requires the argument before him to be confined to a point of law, usage or court practice, the judge deciding the case has all the proceedings read, examines the evidence, documentary and parole, and if he thinks the facts wrongly found by the lower court, decrees according to his mature judgment for appellant or respondent, and with any alteration he pleases in any part of the award. The Privy Council does this with the cases carried to that tribunal, as the Sudder Court here have always done with its special appeals; and though there is reason for confining the admission of the appeal to a point of law in order to save the judge finding upon that, the necessity of going into the merits of the whole case, which we have not judges enough, nor they time enough, to permit, there is no reason, as it strikes me, why, if the whole proceedings of the lower court are to be read through, the parties should not have the benefit of the maturer judgment, which the judge of the higher court is capable of bringing to the adjudication of the cause.

The draft of Act before us provides in clause 7, that the "Sudder Court shall determine the point or points certified," as the ground for admission of the appeal, "and no other point or part of the case whatever."

If our mofussil decrees always stated clearly one ground of decision, or, stating many, so put them that there could be no doubt of the bearing of each on the award, there could be no objection whatever to the course thus proposed by the Law Commission. In that case, the upper court receiving the appeal as a mere issue on a point of law, would hear counsel upon it, and decide it without going at all into the merits of other parts of the case, and of course not hearing all the papers read through, as in other appeal causes. The draft of Act, however, does not allow this, for it provides in clause 5, that when admitted, the case is to be brought on "the file of the Sudder Court, to be heard and determined in due course;" that is, not in a new form as an interlocutory appeal on a point, but as an appeal *i mimburee*, as the vakeels call it, according to all the forms, and with the obligation to read every thing as prescribed for such appeals.

At the trial of the cause, therefore, the whole case, fact as well as law, must be before the higher court, the trouble of going through it must be taken, and nothing whatever is saved by prescribing that other errors than those of law, precedent or practice, gross and flagrant as they may be found, shall not be taken cognizance of at all.

The Act, however, does not in fact require this, for in clause 8, there is a proviso, that if the special ground of appeal be incorrectly or incompletely certified, it shall be competent to the court to amend the certificate; in other words, if the judge upon trying the cause finds that there are 20 other points on which the lower court's decree is liable to be impugned, besides the special one certified, he may desire them to be made part of the case to be tried; that is, he is to take up the entire merits of the case and see justice done, as it now is by both Sudder and Privy Council.

It may be supposed, however, that such amendments being confined to points of law, precedent or court practice, will have a very narrow range, and give very little trouble; but is such the intention of the framers of this Act? Not a bit of it. In paragraph 12 of the Report forwarding the draft, the Law Commission write as follows, "These terms (law, usage and judicial practice) will include questions touching the rejection or admission of evidence, and the legal

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effect of the evidence admitted, and touching the settlement of the issues, and the consequent shaping of the evidence; and we are of opinion that the irregular rejection or admission of evidence, mistakes as to the legal effect of evidence, and in the settlement of the issues, and consequent misdirection as to the evidence to be adduced, ought to be admitted as good grounds for a special appeal, as well as ignorance or misconstruction of the law or usage applicable to the case."

All this, therefore, may be matter for amendment of an erroneous or incomplete certificate, and the judge trying the cause must, if he does his duty, satisfy himself that the proceedings of the case as read before him are quite correct in all those particulars. He will, therefore, try the whole cause, and amend the judgment in every particular, just as the upper courts now do, with the addition only of the trouble to himself and to all others concerned, of first ordering an amendment of the certificate.

So much in respect to the principle of trying the whole cause when once before the court, which, though professed to be, is not in reality prohibited; my objection to inserting the prohibition in section 7, applies rather to the probable effect than to the real intention of the Law Commission. I will exemplify my meaning by a case. There is the great Durbunga inheritance cause, now pending in Tirhoot. The Raja died a couple of years ago, leaving two sons by two ranees, the elder by the younger ranee, and the younger son by the elder ranee. The elder son has got entire possession, and his brother is plaintiff, and the case, most absurdly as I hear, has been referred to be decided by a Sudder Ameen, who has no weight of authority or power of serving a process, or compelling an attendance. Now, the issues will be something to this effect, that the Hindoo law giving a right to an equal division, may be denied by the son who has taken the whole estate, or a special custom of primogeniture in the family may be pleaded. The existence of such a custom again may be denied, as well as the legal effect of any custom against the general rule of law; then the nature of the custom, whether it is such an one as will give the elder brother a right to the whole, or only to a somewhat larger share, or again, certain conditions of the first marriage may be pleaded. Now the decree appealed against may begin by mistaking the Hindoo law, by saying, according to it, the elder brother is entitled to the whole, making a discretionary allowance to his brothers; it may and probably will proceed with a "besides, there is a special custom established in respect to this family, that the elder brother should have the whole," and then 20 make-weights of fact and argument will, as usual, follow to support the judgment. An appeal is lodged for error of law, it is admitted, and the higher court decides that the Hindoo law gives no right of primogeniture. What in this very difficult case does the appellant gain by procuring such a decree? There is the question of fact remaining, the existence of the special custom in the family; the higher court will say, "We must assume this as declared in the decree below, because it is a question of fact, and though we find no evidence for it, nor as to the special nature of the custom, still it is fact, and must be taken as declared in the decree."

If the whole case is read through in the upper court, it is clear that gross injustice will be done by leaving such a fact to be lightly assumed, without any saving of trouble to the higher court; whereas, if the whole case is left as heretofore, before the higher court, it will decide the issues both of fact and law, properly in succession, correcting the errors of both as the trial proceeds.

An argument is raised upon the number of causes tried by moonsiffs, 57,179 in a year in Bengal, as if the admission of special appeals under the restriction proposed to law points, would cause such an influx of business in deciding the law points, that it would be quite impossible to allow questions of fact to be taken up also in the upper court. Really this reference to numbers on all occasions, is, in my view, the most absurd of all arguments. There are 20,000 causes and more disposed of annually by the Court of Request of Calcutta, and how many of them involve points which the parties find it worth the while to carry by certiorari before the Supreme Court? some two or three a year, if so many. The 57,179 causes of the interior are the mofussil representations of these 20,000, and somewhere about the same proportion would find their way to Calcutta by special appeal, if indeed so many, for the appeal being a second one, and being more clogged as to time, distance, expense and ground of admission, we may take it for granted the proportion of such would be much less.

Besides,

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Besides, as I have before said, I am for leaving the restriction to law points as the exclusive ground for admission of appeals, because of the impossibility of allowing every case to be argued upon its own merits, and read through before the admission is determined upon; but leaving this, if the case being admitted is to be tried in ordinary course as an appeal of the regular file, I maintain that nothing is gained of time or trouble by restricting the ultimate decision to the certified grounds of admission, unless the judges do not do what the proposed Act authorises and requires them to do; viz. to look out for and receive motions for amendment of the certificate, so as to extend the trial to the whole merits of the case.

On these grounds I would pass the Act, with the omission of clauses 7 and 8, without making any other alteration.

(signed) *H. T. Prinsep.*

19 May 1842.

MINUTE by the Honourable *A. Amos*, with a Note by the Honourable *W. W. Bird.*

Legis. Cons. 16 Dec. 1842. No. 24. Special Appeal Act.

I HOPE this important Act may now pass the Council. It appears to me to be the only means of maintaining uniformity in constructions of law; this is effected by sending all points of mere law to the Sudder Courts.

On the vast utility of the Act in this point of view, there seems to be a general concurrence of opinion. The sole point remaining for discussion is Mr. Prinsep's motion, that the 7th and 8th clauses (for he agrees with the rest of the Act) should be dispensed with.

I have to request the particular attention of Council to Mr. Millett's note upon this subject, which I now circulate. I think it will be seen from a perusal of that note, that it is impossible to dispense with those sections, especially the 7th, without invalidating the practical operation of the Act altogether.

I would go further were it necessary, and say that it would be most objectionable to admit a case to appeal, because a judge finds in it a questionable point of law, and then, because it is so admitted, to enter into all matters of law and fact; to revise a question of fact because there happens, by accident, to be also a question of law. But it is sufficient to say that it appears from Mr. Millett's note, and such is the unanimous opinion of the Commissioners, that such a course would, in the new state of things, be as impracticable as it is faulty in principle.

It is to be regretted that the Commission did not inform the Council in their Report, more particularly as to the actual state of business in the mofussil courts. However, this is now supplied, and it clearly appears that the argument from numbers in this case is not "the most absurd of all arguments," and that, on the contrary, the ingenious reasoning opposed to numbers, turns out to be completely erroneous. The object of that reasoning is to show, that the number of special appeals from the decisions of moonsiffs, and which are now, for the first time, to go up to the Sudder, will not create inconvenience, though the whole case, and not merely the special points appealed against, be revised. The stress of the argument is, that moonsiffs' cases are not of a nature to admit of special appeals, and therefore that the large numbers of them which are stated, will, in fact, yield a very small return of special appeals. A short answer disposes of this argument; viz. in the last year, the special appeals from the moonsiffs' decisions, referred by the zillah judges to the Sudder Ameens, was about three times the number of appeals decided, upon an average, in any year by the Sudder Court, with the addition of three additional judges. But the Act sends to the Sudder not only special appeals, such as we have just considered, but also those now disposed of by the zillah judges themselves, and not referred to the Sudder Ameens. How is it possible that the Sudder can get through these cases, unless they confine themselves strictly to the points of law, which are the subject of the special appeal? I put the case as to practicability, but if it were practicable, I would not allow what, in substance, is a general appeal, merely on the ground that, by accident, there happened to be a point which a judge thought fit for a special appeal.

I have only to mention, further, some mere questions of form. Mr. Prinsep says that, by the Act as framed, the courts must, in pursuance of other Regula-

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tions, look through the whole proceedings. It is unnecessary to inquire into this point, as the intention of the framers of the Act is, that the Sudder should not look further into the proceedings than was necessary for the decision of the special points. I agree, however, with Mr. Millett, that the Regulations do not prescribe anything of the kind supposed. But, if they did, I think they are clearly superseded by the terms of the 7th section of this Act. However, if ever this be doubted, the words which I now add to the draft must, I think, remove all difficulty.

Another difficulty has been raised; suppose a judge decides upon several grounds, some of fact and some of law, and the legal grounds are bad, what is to become of the case? Suppose, for example, the question turns upon a custom, and he says, I do not think the custom is proved to my satisfaction; besides, it is an illegal custom for one reason, and besides it is illegal for another reason. This is probably a common case, but a little care on the part of the Sudder will prevent its occasioning inconvenience. It will be one great advantage of the Act to compel the zillah judges to be more precise in their decrees. In the case proposed, the judge should be asked, "have you decided, yes or no, whether there be such a custom?" If you say there is no custom, then, however many points of law there may be, there is no special appeal. If the judge answers, "I have not made up my mind whether this is a custom or not, and so I put in the points of law" (a very likely case to occur), he would deserve to be reprimanded. He ought to have decided the question of fact, which was one of the issues before him; and, at all events, he was wrong in not explicitly stating that he had come to no decision upon the question of fact. If it appear from the decree that the judge has clearly determined that there is no custom, his going on to state objections to the custom cannot give an appeal, but may deserve censure for irrelevancy, and as tending to throw a doubt upon the point whether he had decided the issue of fact or not. Judges should be made to learn that they are responsible for each separate ground of their decision, especially now that a decision upon a ground of fact is final, and cannot be made otherwise by adding grounds of law.

(signed) *A. Amos.*

25 May 1842.

The only point remaining for decision in respect to the Special Appeal Act, is, whether the 7th and 8th clauses should be dispensed with. I am of opinion, for the reasons assigned by Mr. Amos, that they should not be dispensed with, and that nothing in any case, except the special points appealed against, should be revised. I concur with all parties in the vast utility of the proposed Act, and I trust that it will be now passed, as amended by Mr. Amos, with as little delay as possible.

(signed) *W. W. Bird.*

28 July 1842.

Note.

Legis. Cons. 16 Dec. 1842. No. 25. Enclosure. Proposed Act respecting Special Appeals.

The principal point is the number of special appeals which the proposed Act is likely to throw into the Sudder Court.

An analogy has been drawn from the business of the Court of Requests at Calcutta, and it is supposed that as few or no writs of certiorari are applied for to rectify the errors of that court, few or no special appeals will be presented to the Sudder Dewanny Adawlut from the decisions of the moonsiffs. But a little consideration and attention to facts will show this supposition to be fallacious.

In 1837, 15,700; and in 1839–40, 7,587 suits were decided on their merits, by the Court of Requests. I am not aware that a single writ of certiorari was applied for during these periods; yet it cannot be supposed that all parties were satisfied with these 23,287 judgments. There may be some legal difficulties, there certainly are pecuniary obstacles in the way of obtaining redress by this mode of appeal, which effectually check resort to it, though the supreme and subordinate courts are in the immediate vicinity of each other.

The Court of Requests has jurisdiction only in actions of debt, the moonsiffs, speaking generally, have cognizance of all descriptions of suits not exceeding 300 rupees in value, excepting suits for lakhiraj land. The accompanying

Statement

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Statement (A.) shows the different descriptions of original suits instituted before the zillah judges and moonsiffs in the Lower Provinces, in 1840, the total of the former being 5,973, of the latter 91,772.

The number of suits decided on trial by the moonsiffs in 1840, was 57,189; the number of regular appeals preferred from their decisions in the same period, 8,902, though the residences of many of the appellants must be 70 or 80 miles distant from the zillah courts.

See Statement (B)

As respects special appeals, we can form a sufficiently correct estimate of the number which, under the proposed law, would be brought under the Sudder Court, from the following data.

In 1840, the Principal Sudder Ameens decided on their merits 5,997 appeals from the decrees of moonsiffs and Sudder Ameens; and from their decisions, 1,087 special appeals were admitted by the zillah judges. Under the proposed law, the whole of these special appeals would have been carried into the Sudder Court. In the same year the zillah judges decided on the merits 2,277 moonsiffs' and Sudder Ameens' appeals; and from these decisions, under the draft Act, a special appeal would lie to the Sudder Court. It is impossible to say how many special appeals of this description would be admitted, but allowing only 200, and granting also some deduction from the 1,807 above noticed, in consideration of the difference of distance and expense, it would not be safe to assume the number of new special appeals for the Sudder Court at less than 1,000 per annum.

926 special appeals were decided on their merits by the zillah judges in this year.

Compare this with the number of regular and special appeals actually disposed of by the Sudder Court in 1841, and the difference is startling.

	Decided on Trial.	Dismissed on Default.	Adjusted or withdrawn.	Total Disposed of.
Regular Appeals - - -	220	38	12	270
Special ditto - -	158	6	2	166
Total - - -	378	44	14	436

The present practice of the Sudder Court in regard to the trial of regular and special appeals, is correctly stated in the minute.

My own view of the case is, that whereas under clause 1, section 2, Regulation XXVI. 1814, the court is bound, whilst determining on the admission or rejection of an application for a special appeal, "to assume all the facts as stated in the decree;" it was likewise the intention of the Regulation that the principle should be followed out in every stage of the future proceedings; in other words, that in trying the special appeal after admission, the points of law or usage, and those alone, should be considered to be before the court.

I admit, however, that the practice of the court for many years past has been opposed to this view, and some may consider the last* part of clause 4, section 2, Regulation XXVI. 1814, likewise opposed to it; I think the words refer merely to rules of procedure, and not to the subject-matter of the appeal.

The former practice of the court in special appeals, is exemplified in the case of Kalachand Chukurbuttee *v.* Joogul Chukurbuttee, in a note to which the reporter observes, "The judgment in this case further shows, that in special appeals the Court of Sudder Dewanny Adawlut do not consider themselves bound to decide more than the point on which the special appeal is admitted."

Sudder Dewanny Reports, pp. 279, 280, A. D. 1809.

The rules respecting appeals have lately been considerably modified.

By clause 3, section 2, Regulation IX. 1831, in the trial of appeals, or the hearing any petition of appeal, a single† judge of the Sudder may "exercise his

* After a special appeal is admitted, "the court shall proceed to investigate the suit, under the same rules as are prescribed for the trial and determination of regular appeals."

† By clause 1, a single judge may confirm a judgment of the lower court, "with or without a revision of the whole proceedings, as the nature of the case may appear to require."

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his discretion in calling for the proceedings of the lower courts, or such part of them as may appear necessary, and may further order a report in English (or Persian), as the occasion may render advisable, on any points requiring explanation, prior to passing a determination on the case or matter in appeal."

And by clause 7, of the same section, to enable the Court of Sudder Dewanny Adawlut duly to exercise the powers vested in them by this section, "the several courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force which require them to record the point or points at issue between the parties, and the grounds on which their judgment or orders may be issued.

These provisions have, I believe, very little, if any, practical operation, and if the present practice of trying special appeals is to be adhered to, it appears to me that the inundation of the court must be the inevitable consequence of the passing of the Act.

It has been observed, that the present practice is rendered necessary by the lax mode in which the judgments of the subordinate courts are drawn up; but the proper remedy for this evil is, that those courts should be required to frame their decrees with more precision, distinguishing carefully between questions of fact and law, and avoiding all redundancy. Such was clearly the intention of clause 7, section 2, Regulation IX. 1831, and the rule proposed by the Law Commission, that the European judges should draw out their judgments in English, would greatly conduce to this desirable end.

There is probably less of this confusion than is supposed. In hearing petitions for special appeal, the Sudder Court, I am told, are now very strict in confining the applicants to the prescribed limits, and thus both the law or practice proceed upon the ground that questions of law and points of fact are generally distinguished as the decrees of the lower courts.

With regard to the Tirhoot case, the present law on the subject of primogeniture and family usage is so well established, that I should scarcely think the vakeels would plead in opposition to it. I certainly hope the native judges would not mistake it.

It is well known that to give family usage the force of law, it must have been ancient and invariable. This can only be established by a series of facts proved in evidence; whether the particular facts so proved amount to such an ancient and invariable usage, seems to me a question of law which might furnish ground for a special appeal, in like manner as it may be a question what legal effect is to be attributed to certain given words.

Sect. 5, of Draft.

By providing that the special appeal when admitted should be "heard and determined in due course," the Law Commission did not mean that the court should be placed under an "obligation to read everything." The whole tenor of the draft is against such a mode of proceeding, and, as above shown, the existing law does not oblige them to do so even in regular appeals.

Perhaps, to avoid all possibility of the court pushing its inquiries beyond the limits which, under the present system, it would not be expedient to exceed, the trial of a special appeal might be strictly confined to the points noticed in the petition of appeal, and on which the appeal was actually admitted, nor am I aware that more was intended. (*See* clause 3, section 2, Regulation XXVI. 1814.)

23 May 1842. (signed) *F. Millett.*

(A.)

ABSTRACT STATEMENT of the different Descriptions of ORIGINAL SUITS instituted before the Judges and Moonsiffs in the Lower Provinces, during 1840.

	1. Suits connected with Land-rent.	2. Suits for Real Property in conveyance by Sale.	3. Suits for Real Property by Gift.	4. Suits by Mortgage.	5. Suits by Will.	6. Suits by Dowry.	7. Suits by right of Pre-emption.	8. Inheritance under the Mahometan Law.	9. Inheritance under the Hindoo Law.	10. Claims in right of Adoption.	11. Lakhiraj Suits, under Sect. 30, Reg. II. 1819.	12. Suits regarding Retree, and other dependent Tenures.	13. Suits to contest Sales by Collectors for Arrears of Government Duties.	14. Suits for Land not before included, such as Boundary Suits, &c.	15. Debts on Bond, or otherwise.	16. Suits of Bankers or Traders.	17. Religious Suits connected with Caste, Rights of Priests, &c.	18. Damages for Breach of Contract.	19. For recovery of Money embezzled.	20. Wages.	21. Suits connected with Indigo, Sugar, Silk and other staple Products.	22. Suits for Personal Property, not before included.	23. TOTAL.
Judges - - -	1,291	394	30	197	3	15	38	42	79	1	134	124	99	420	1,744	199	282	55	108	19	203	496	5,973
Moonsiffs - - -	16,288	926	28	439	2	28	77	181	174	5	*27	955	175	1,770	54,567	4,428	286	632	614	722	3,806	5,632	91,772
	17,579	1,320	58	636	5	43	115	223	253	6	161	1,079	274	2,190	56,311	4,627	568	687	722	741	4,009	6,128	97,745

Suits decided on their merits by the Calcutta Court of Requests in 1837 - - - - 10,145
Compromises and non-suits - - - - - - - - - - - - 15,700
TOTAL - - - 25,845

In 1839–40, 12 months, suits instituted - 22,664

Decided on trial - - - 7,587
Nonsuits and compromises - 15,033
Pending - - - - 44

* These are believed to be boundary disputes between Lackhirajdars, and Malguzars and to be erroneously entered under this head.

(B.)

ABSTRACT STATEMENT, exhibiting the Number of Appealable Cases decided by the several Classes of Native Judges in the Year 1840, and the Number of Appeals actually preferred within the Year.

CLASS OF JUDGES.	Description of Cases.	Number of Decisions on Merits in 1840, appealable.	Number of Appeals preferred within the Year 1840.	
Moonsiffs - - - - - - - -	Original suits	57,189	8,902	9,918
Sudder Ameens - - - - - -	- ditto -	2,558	1,016	
Principal Sudder Ameens - - - -	- ditto -	1,953	808	
	Appeals -	5,997	1,087	

The Zillah Judges in 1840 decided on their merits appeals from the decisions of Moonsiffs and Sudder Ameens - - - 2,277

The Sudder Dewanny Adawlut in 1841 decided on their merits - Regular Appeals - - - - - - - - - 220
Special ditto - - - - - - - - - 158
378

Legis. Cons. 15 Dec. 1842. No. 26. Special Appeals.

MINUTE by the Honourable *H. T. Prinsep*.

ACCORDING to the draft of Act II., a special appeal is in all cases to lie to the Sudder Court only; and the same rule is to be applied to all cases involving less than 5,000 rupees, whether a case of 10 rupees decided in the first instance by a moonsiff, or one of 4,500 decided by a Sudder Ameen, and afterwards in appeal by a zillah judge. I have no objection to offer to the general application of this principle, because, though the number of petty cases is enormous, stated to amount in Bengal to 57,179, decided annually by moonsiffs, the overburthening of the Sudder Court is not likely to follow, because the great bulk of them will be common *lêu dêu* cases, involving no point either of law or fact that could be carried to a third court; and even of those turning on nice points, the amount at issue will not be large enough to make it worth while to carry the second appeal to the Sudder at the Presidency. On this account, comparing the bulk of these moonsiffs' decisions as analogous to the judgments of the Calcutta Court of Requests, I made light of the argument founded upon reference to this last number of 57,179 decisions. The reply is a statistical reference to the number of second or special appeals locally brought from their numerous decisions, which seems to have been only 1,000 in all Bengal, just the number I had in my mind's eye as the extreme of what we might reckon to have to deal with. But if all these are to be brought to Calcutta, then to be laid under the known disadvantages and expenses of our Sudder, one quarter may be set down as the maximum that would ever be brought to a hearing.

I did not think, nor do I now think, that the introduction of this principle will require any more stringent forms of process for the admission and trial of appeals, than those which experience has shown to be necessary for correcting the errors of ignorance and of faulty practice in the lower courts under the present system. I know enough of the character of mofussil decrees to be able to say, that not one in ten is so drawn as, in a case of intricacy, to allow it to be said upon which specific issue, out of many stated, the actual decision has turned; and therefore it is I have argued that you allow the admission of an appeal because of a wrong statement of law on the face of the decree, and preclude the court which admits the appeal from taking up the whole case when admitted upon evidence. Upon such a ground you will give the wronged person a privilege of no avail to him, for enough of asserted fact will still remain in the body of the decree to prevent his drawing benefit from the exposition of error, and therefore, to preclude the consideration of the whole case, will defeat the purpose of the appeal, and amount to a total prohibition of special appeals. It will operate as an inducement to lower courts to stick always a question of fact as a make-weight into their decree, on general grounds, so as to prevent their ever being carried into the upper court.

The courts of India and the Privy Council in India have found, in consequence of this method of making decrees, that they can only do substantial justice by considering the whole case, when once it is admitted on their file by second or by first appeal. This is admitted to be the practice of the courts at present, notwithstanding that the law has armed them with a power of confining their judgment on the second appeal to the special points of law, which were the ground of admission. It is admitted also that substantial justice requires this, and that it would be advisable to continue the practice, if it were possible. It is the half lakh of moonsiffs' cases that is the grand impediment. We cannot provide judges in sufficient number to go into the merits of so many appeals as this half lakh of cases will occasion. This, Mr. Millett has clearly proved to be a bugbear, by showing that 1,000 is a maximum of applications for a second appeal to be expected, and this number I regard as likely to be reduced to one quarter. But if we had to provide for the entire 1,000 at the Sudder of Calcutta, I should prefer much to shut them out altogether, rather than fix such rules and restrictions for their admission and trial, as would prevent their being dealt with so as to do substantial justice to the aggrieved. If it be necessary to make special provision against a possible overflow of business at the Calcutta Sudder, the same necessity does not exist at Allahabad. Why, therefore, preclude the court of that station from dealing with cases so as to do justice and give satisfaction?

It will be seen, that any argument against confining the trial of second appeals to the special point of law which has procured the admission of a case to the file,

is

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is based entirely on the practice, defective be it or otherwise, still the universally followed practice, of mixing in the decree the decision of all issues, as well of law as of fact. Mr. Amos has a remedy for this. He says, compel greater precision, and reprimand judges who pretend to decide on two grounds, one of law and the other of fact. Make him say which he rests upon, and hold judges responsible for each separate ground. Now, if I know any way of compelling this, and making perfect lawyers of all those whom we employ in administering civil justice, I should subscribe at once to the expediency of adopting these remedies; but we have yet no code of procedure for civil justice, no means that I know of for preventing a suitor or dependent for resting on 20 issues, some of law and some of fact; and if they are all pleaded, how can a judge avoid stating his opinion and judgment on each? Under our system there is no means of obtaining successive decrees on each separate point, so as to leave each severally open to appeal, as in equity cases in Europe is commonly done. Let pleadings and forms of trial be brought to that order and correctness of form, as to allow interlocutory appeals in the course of trial on any point of law wrongly assumed, and then I will admit that the law should confine the upper court to the special one point appealed; but until this is done, and while our forms remain defective as they are, and so long as all points are jumbled together in our decree, not commonly only, but invariably and necessarily, you do but mock the aggrieved and injured litigant, by giving him an appeal on one only of these points, without power to have the whole tried, any one of which, howsoever erroneous, may be conclusive.

I still think sections 7 and 8 should be omitted, and the course of trial be left as established by the practice here and in the Privy Council, until the new forms of procedure under preparation by the Law Commission shall have operated the desired improvement in the character and forms of the decrees appealed against.

28 July 1842. (signed) *H. T. Prinsep.*

MEMORANDUM of Opinions on Draft Act for amending the Rules of Special Appeals.

Legis. Cons. 16 Dec. 1842, No. 27.

IN the 4th section "a single judge" be altered to "one or more judges;" the present wording of the section may possibly be construed as rendering it imperative on a "single judge" to decide upon all applications for the admission of special appeals.*

Judges Sudder Court, Fort William.

If the suggestion be adopted, a corresponding alteration will be necessary in the concluding part of the section, as follows: "It shall be competent to the judge or judges at his or their discretion."

Register's Letter, No. 213, of 28 Jan. 1842.

The words, "in English, in the form of certificate, which shall be translated,"† in the 5th section, might advantageously be omitted, no court but the Sudder Dewanny being competent to admit such an appeal.‡

The advantage of section 8, under its very general wording, doubtful; recommend its entire omission, or to state its object more explicitly.

The provisions of section 10, to be extended to applications for the admission of appeals pending in the zillah courts at the time of passing the Act.§

Call attention to remarks on the subject of appeals in summary and miscellaneous proceedings. The rules existing for regulating the appeals in such cases are,

See Register's Letter, No. 3897, of 29 Oct. 1841.

1st. The appeal from the orders of the moonsiff and the Sudder Ameen lies to the zillah judge, whose decision is final.‖

2d. The

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* I apprehend this is what was intended; but to remove ambiguity, it might be worded, "any judge of the court sitting singly."

† It would, I submit, be contrary to the intention of the draft to omit these words.

‡ The object seems clear, the Sudder Court trying the special appeal may, the certificate given by one of its judges sitting singly, and to this there can be no objection.

§ The Council will decide whether the Act should extend to applications for special appeals not yet admitted. Those which have been admitted and are pending are excepted.

‖ Perhaps the Council may think it best to take up this subject separately; it has not been considered by the Law Commission, whose draft is now before the Council.

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2d. The appeal from the order of the Principal Sudder Ameen in cases below 5,000 rupees, lies to the judge, with a special appeal to this court.

3d. The appeal from the order of the Principal Sudder Ameen in cases above 5,000 rupees, lies direct to the Sudder Dewanny Adawlut. This rule applies to all orders passed by the Principal Sudder Ameens in execution of their decrees in cases above 5,000 rupees, which have not been appealed, or which having been appealed, the appeal has been rejected under clause 2, section 2, Regulation IX. 1831, without summoning the respondent, and an order issued to the Principal Sudder Ameen to proceed with the execution of his own decree. The rule does not apply to cases above 5,000 rupees, which have been decided after admission of appeal, as the decrees are then the decrees of the Sudder Dewanny Adawlut, are forwarded to the judge for execution, may by him be referred under Act V. of 1836, for execution, to the Principal Sudder Ameen, and would then come under the general rule of section 7, Act XXV. of 1837.

4th. In all other cases coming under the provisions of section 8, Act XXV. 1837, the appeal from the order of Principal Sudder Ameen lies to the zillah judge, with a special appeal to this court.

These rules should be generally retained, because as in all interlocutory orders and miscellaneous cases, the judge is the appellate authority in the zillah courts. Any provision which should admit of an application to the Sudder for a special appeal in such cases, would tend to overwhelm this court with such applications, even though very few of them might be admitted; and as all orders in miscellaneous cases are open to a regular suit, the court see no reason for extension of the principle of appeal in such matters, and propose the adoption of the following provisions by a legislative enactment; viz.

1. That the order of the judge on appeal from all interlocutory orders, and orders in miscellaneous cases passed by the Sudder Ameen and moonsiffs, shall be final. This rule to include all orders passed by those officers in execution of decrees in cases originally tried in their courts.

2. That the order of the judge in appeals from all interlocutory orders, and orders in miscellaneous cases passed by the Principal Sudder Ameen in cases originally tried in the court of a moonsiff or Sudder Ameen, shall be final.

3. That the order of the judge in appeal from all interlocutory orders in suits below 5,000 rupees, and orders in miscellaneous cases passed by the Principal Sudder Ameen, under the provision of sect. 8, Regulation XXV. 1837, shall be specially appealable to the Sudder Dewanny Adawlut.

Sudder Court, Allahabad. *See* Letter No. 374, of Officiating Secretary to Lieut.-Governor of North Western Provinces.

The provisions of the amended draft similar in spirit and intent to the draft of 19th July 1841, which the court considered not calculated to modify the restrictions complained of, and therefore equally open to objections; neither of the drafts make provision for cases of imperfect investigation, of erroneous decision, or of manifest injustice, being confined to contingencies of opposition to or the existence of doubts regarding law, usage and practice.*

The Lieutenant-governor entirely and fully concurs in the above sentiments.

Judges Sudder Adawlut, Fort St. George. *See* Letter from Chief Secretary, No. 128 of 25 Feb. 1842

With reference to section 2 of Act; of opinion that there should be the same discretionary powers to admit a special appeal after the limited periods, on satisfactory cause being shown for the delay, as there is to admit a regular appeal.†

With reference to sections 5 and 6; of opinion that two judges should agree in order to the admission or rejection of a special appeal; the collective court should have the same power over initiatory proceedings, that it has under clauses 7 and 8, in respect to the determination of the points on which the special appeal was admitted.‡

With reference to section 7; of opinion, that though the court admitting the special appeal should not be bound to decide more than the points upon which the special appeal is admitted, that court should have the power to decide the whole suit.§

The

* The Council were of opinion that the Act ought properly to be so confined.

† The Council will decide whether this discretion should be expressly given, or whether the wording of the draft does not include the discretion already.

‡ A single judge may reject an application for a special appeal. The Madras Court would have two concurring judges, which would often require three present. In Calcutta, so much agency could perhaps hardly be afforded.

§ This seems contrary to the principle laid down in the fresh draft by the Supreme Government.

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The Governor of Fort St. George observes, that as the rules for the admission and disposal of special appeals are incorporated in the draft Act for the modification of the judicial system of the Presidency of Fort St. George, it does not appear necessary to make the present Act applicable to that Presidency.*

Judges Sudder Adawlut, Bombay. *See* Letter No. 244, of 3 Feb. 1842, from Officiating Chief Secretary.

The existing Regulations provide that no special appeal shall be admitted or rejected, excepting by a court composed of at least two judges; the court are strongly opposed to such an authority being vested in a single judge, and therefore would recommend that no alteration be made in this part of adjudication.†

Mr. Kirk, moonsiff of Ghazeepore, proposed the following draft in substitution of that of the Law Commission.

AN ACT for amending the Rules of Special Appeals.

The points within brackets are in excess of the present draft.

[1. Clause 1, section 28, Regulation V. of 1831, and section 6, Act XXV. of 1837, are hereby modified.]

2. It is hereby enacted, that from and after the a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Dewanny Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, and to the zillah and city judges, from all decisions passed on regular appeals on the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage or practice upon which there may be reasonable doubts [or when the judgment against which the appeal is preferred shall, from the exhibition of another decree of the same court, or of another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, clearly appear to be in opposition thereto or inconsistent with such other judgment.]

This is in excess of the present draft.

3. And it is hereby enacted, that applications for special appeals shall not be admitted unless they are presented to the proper court as aforesaid, within the period limited for the presentation of regular appeals.

4. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case, [and such application shall be written upon the stamped paper prescribed with reference to the value or amount of the suit, calculated according to the provisions for the valuation of property sued for in the civil courts. The application shall state distinctly the specific ground or grounds under which the special appeal is solicited, and shall be presented either by the party in person or by a pleader or agent. All exhibits filed with petitions for admission of special appeals, will not be subject to payment of fees.]

The part within brackets is in excess of the present draft.

5. And it is hereby enacted, that the judge of a zillah or city court is competent on any case in which no further regular appeal is open under the existing Regulations, but in which either of the parties may be desirous of a further special appeal, to certify to the superior court when the circumstances demand it, that such case involves some point of general importance hitherto apparently unsettled, and fit to be reconsidered in a further appeal.‡

6. And it is hereby enacted, that it shall be competent to the Courts of Sudder Dewanny Adawlut, in any case in which the special ground of appeal may appear to have been incorrectly or incompletely certified, to return the certificate for amendment, or in cases in which it may appear to have been improperly transmitted, to annul the certificate altogether, without requiring the attendance of the party or his vakeel or agent.

7. And it is hereby enacted, that every application for a special appeal duly presented to the Sudder Court, shall be heard by a single judge of the court, in the presence of the special appellant, or his vakeel or agent; and it shall be competent to the judge, at his discretion, to call for and peruse any document forming

* Perhaps the Council may think that the two subjects admit of every separation, and that the subject of special appeals need not wait for the reform of the Madras judicial establishments.

† This is the same objection as that made by the Madras Court.

‡ This is in excess of the present draft, and seems inconsistent with what follows; for if every application for a special appeal must be made to the Sudder Court, this application to the zillah court is out of place. If it is intended that parties shall have an option of applying either to the zillah judge or to the Sudder, a different wording will be required.

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forming a part of the record of the cause, and to summon the opposite party to answer the application.

8. And it is hereby enacted, that if it shall appear to the Judge of the Sudder Court that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall at the same time reduce the point or points to be determined to writing, in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course.

9. Provided, that when the special ground of appeal may have been incorrectly certified, it shall be competent to the court to amend the certificate.

10. And it is hereby enacted, in every case of special appeal admitted as aforesaid, the Courts of Sudder Dewanny Adawlut shall determine the point or points certified as above enacted, and no other point or part of the case whatever.

The words in brackets are in excess of the present draft.

11. And it is hereby enacted, that if it shall appear [to the zillah or city judge, or] to the Judge of the Courts of Sudder Dewanny Adawlut that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

The words within brackets are in excess of the present draft; viz. to the end.

12. [If, on consideration of the circumstances of the case, the court shall see reason for admitting a special appeal, on any of the grounds stated in the second section, the appellant shall be required to furnish the prescribed security within a reasonable period, to be fixed by the court.]

13. If the court shall reject the petition, the appellant shall not be entitled to receive back the amount or value of the stamp on which the petition may have been written; the courts are however vested with a discretionary authority, on any particular instance of hardship, to refund any portion not exceeding three-fourths of the amount of such stamp duty, to the party who may have paid the same, or to his legal representative.

14. The courts empowered to receive the special appeal in such cases, shall be competent either to try the merits of the case and pass a final judgment thereupon, or to refer the suit back for revision, and a further judgment by the court which shall have passed the original decision, or that given on the first appeal.

15. In the special appeals provided for by the foregoing sections, as well as in all other appeals, regular or special, under the Regulations in force, if the suit in appeal be referred back for further investigation and decision without a judgment upon the merits of the case, the stamp duty paid by the appellant shall be returned to him.

16. Pleaders or agents to settle with their constituents the compensation to be made them for presenting such application or petition, and performing any other act connected therewith. The amount of the compensation which may be voluntarily agreed upon shall be specified in the vakalut nameh or mokhdurnamah. However, it shall be competent to the court to which the application may be preferred, to order the amount of the compensation agreed upon to be reduced, should it in any instance appear to be unnecessarily large or exorbitant.

17. In all suits decided by moonsiffs or Suddur Ameens, an appeal shall lie to the zillah or city judge, and a further or special appeal to the Sudder Dewanny Adawlut; but if appeals from their decisions be referred to and decided by a Principal Sudder Ameen, a special appeal shall lie only to the zillah or city judge.]

23 April 1842. (signed) *Fred. Jas. Halliday.*

(No. 323.)

Legis. Cons. 16 Dec. 1842. No. 28.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq., Secretary to the Government of India with the Governor-general; dated 16 December 1842.

Sir,

Legis. Dep.

I AM directed by the honourable the President in Council to transmit to you, for the assent of the Right honourable the Governor-general of India, as required by section 70 of the Charter Act, the accompanying draft of Act for amending the rules of special appeals.

2. The

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2. The existing law of the Bengal Presidency gives, in all civil cases, one original trial, one appeal and one special appeal. In one class of cases, those generally of larger individual value, which are heard in appeal by the zillah judge, the special appeal is to the Sudder Court; in another, the far larger and probably in the aggregate the far more valuable and important class, the appeal is heard by the Principal Sudder Ameen, and the special appeal by the zillah judge. His decision is final; and thus, a special appeal being by its nature usually confined to new and difficult questions of law and practice, each zillah judge may become, to a considerable extent, a lawgiver to his zillah. Each zillah may have a law and a practice not a little differing from those of its neighbours, and the law and practice of each zillah may often vary most inconveniently, with every change that occurs in the presiding zillah judge.

3. It has operated to a certain degree as a remedy for the evil thus involved in the existing state of the law, that along with a somewhat forced construction of a particular Regulation (X. 1796), a custom has grown up among the zillah judges, of referring to the Sudder Court for the solution of new questions and occasional difficulties. The answers of the Sudder to these references, collected and published from time to time, obtain in the mofussil the force of law, and in this manner as much uniformity of construction is secured as under the circumstances is perhaps attainable.

4. But the system is obviously defective; and besides the general objections to which it is liable, there are peculiar difficulties connected with it which have for some time been pressed upon the notice of Government.

5. The decisions of the Sudder Courts upon these references are extra-judicial. They are often passed upon suppositious cases; they rest almost always upon the statements of facts and arguments, perhaps imperfect, of the zillah judge who originates them; and they are invariably arrived at in private consultation among the judges, and without the advantage of the presence of the parties or the arguments of their vakeels. Thus the court, upon the insufficient materials supplied by a reference of this nature, may give a construction of law to-day, which upon a regular judicial hearing in a case actually before them, they will be obliged to contradict to-morrow; and if his honour in Council be not misinformed, this occurrence has in fact been known to take place. At all events, the decisions are not of so much value as they ought to be, considering the court from which they emanate, and the purposes to which they are applied. Neither do the two Sudder Courts always agree in their decisions. The one governs the practice of the zillahs of the Lower, the other, under the same system of law, that of the Upper Provinces, and in most instances it is important that the practice should be uniform in both divisions of the Presidency. Provision was made for this when the Allahabad Sudder Court was erected in 1831, by a rule, that the judges of the two courts should communicate with one another before issuing any general construction of law, so as, if possible, to agree. But it was not likely that they should often agree under any system, and least of all under the system of constructions which has now been described, and in fact, as will be perceived by the enclosures, which, however, are but a selection from the cases that have actually come before the Government, the occasions of disagreement have been frequent, important and often very embarrassing.

6. Again, the system has proved inconvenient in another way. The zillah judges are unavoidably persons of small judicial experience, and not always of sufficient capacity or acquirement. Their decisions in special appeals, ruling the law of a whole district, may occasionally be manifestly contrary to law, contrary even to the plainest facts. Such cases are supposed to have occurred; at all events they might at any time happen. It has been made a question, and the discussion occupied anxiously much of the time and attention of the Government, whether, in such an event, the Sudder Court of either division of the Presidency might interfere to prevent a failure of justice, or a serious misconstruction of law. It will be seen that the two Sudder Courts were not agreed upon this subject, and that there was much difference of opinion upon it, between the President in Council here and the Governor-general at that time (1839) in the North Western Provinces. Encl. Nos. 1 to 3.

7. When the two Sudder Courts of this Presidency disagree as to these extra-judicial constructions, after consultation according to the rule of 1831, they are directed to refer the case of difference to the Supreme Government. The references made under this rule had become, up to the early part of 1840, much

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more frequent than formerly; it was by no means clear what the Government ought to do upon such references, and the subject occasioned a long discussion, during which minutes were recorded by Lord Auckland and by Mr. Bird, Mr. Prinsep and Mr. Amos. These will be found as Enclosure, No. 4. It will be perceived, that an improvement of the law of special appeal was adverted to as indispensable to a complete amendment of the existing system. But the letter to the Government of Bengal of the 30th March 1840, in which the discussion resulted, contains a statement of the full difficulties with which the subject is surrounded; and it is on other accounts sufficiently important to be quoted at length as follows:

"It is unnecessary to point out the reasons for which it is desirable to maintain uniformity in the constructions of law made by the Calcutta and Allahabad Courts respectively, and which are more cogent than can be urged in the case of any other courts in India. It is obvious also, that diversity of construction may prevail for a long time before an appeal to the Privy Council can restore uniformity; the probability of an appeal being often very small, being subject to accidental circumstances, and at best affording a remote prospect of remedy. The restoration of uniformity by a legislative enactment can only be expedient in some few of the more important cases in which differences of opinion are likely to occur. Under these circumstances, it is doubtless very convenient that Government, when called upon under apprehension of the consequences about to arise from opposite constructions of law, should give an opinion which may be adopted by the judges over the whole Presidency (excepting within the jurisdiction of the Supreme Court) in favour of construction of law as made in the most formal manner in the highest court of justice in one division of the Presidency.

"On the other hand, the interference of Government with any judicial decisions, is, on general principles, inexpedient; and the more so, when it is not authorized by law, and when another course by which uniformity may be restored, viz. an appeal to the Privy Council, is pointed out by the law; and objections may be urged to the influence over judicial decisions of opinions so given in the absence of the parties about to be affected by those decisions. The circumstance of a Court giving judgment against the opinions of all its judges, and which judgment may be sent to England on appeal, without any explanation of the manner in which it has been arrived at, is an anomaly not likely to occur under a discreet use of this power by the Government, and with reference to the nature of the questions which are ordinarily the subject of such differences. But the remote possibility of such an occurrence ought not to be occasioned on light grounds. And it may be observed, that upon various matters of minor importance, a difference of construction by the two courts will not be attended with any serious public inconvenience. Lastly, if either of the Sudder Courts (of which a recent example has occurred) should not be able to adopt the view of the Government, the proceeding may by some be thought open to objection, as detracting from the respect with which the sentiments of the Government should be regarded.

"On a view of the above considerations, his Lordship in Council is of opinion that the expediency of making any or any particular kind of communication to the Calcutta and Allahabad Sudder Courts, upon occasions of their differing on constructions of law, must depend on the circumstances of each particular case. A declaration of the opinion of Government in favour of the view of one or other court, is not to be expected as a matter of course, and the suggestions or opinions of Government will be given with a guarded reference to the consequences of interfering or abstaining to interfere on the particular occasion. The Governor-general in Council thinks also, that in future any communications to the Sudder Courts upon the occasions in question should proceed from the Supreme, and not from any subordinate Government. Upon the remaining subject of constructions of law contained in circular orders, the Governor-general in Council would be disposed to approve of this mode of promulgating the judicial decisions of the Sudder Courts upon constructions of law, as a useful means of directing the attention of inferior tribunals to the precedents of their appellate court by which their own decisions ought to be guided, and one which would lead to a more early promulgation of such judicial determinations than has been obtained by the form hitherto followed in the reports of adjudged cases. But the Governor-general in Council thinks there is much objection to promulgating in circular

orders

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orders constructions of law made by Sudder Courts not in the course of any judicial proceeeding, but in consequence of special references made to the Sudder Court by judges, magistrates or others, or of what occurs as useful for promulgation to the Sudder Court itself. It appears to be the sound rule, that public authority ought not to be given to any construction of legislative acts, unless under the peculiar safeguards attaching to a judicial decision; whereas, the extra-judicial constructions in question must have the effect of a legislative declaratory Act upon all inferior tribunals, besides having an improper influence on the opinions of the Sudder Judges themselves, should they afterwards be required to determine the construction judicially. Other objections may be made to constructions of the nature in question, as unsettling the minds of the community by the successive promulgations of new commentaries, requiring as much attention as the text of the law itself, and probably giving rise to new doubts and difficulties. The time of the courts has, moreover, by these means sometimes been diverted from the real business of the suitors to hypothetical cases, raised by the ingenuity of public officers, who might be otherwise employed in a manner more beneficial to the service. The Governor-general in Council thinks that circulars, conveying any such extra-judicial constructions as have been noticed, ought at least to be submitted for the information and remarks of Government before promulgation, if they are deemed of sufficient importance to outweigh the general objections which attach to constructions of that nature.

"Upon a subject which must be treated with a particular reference to the existing state of Indian institutions, and particularly to that of the subordinate tribunals, in which it is understood that the judges have as yet often but an imperfect means of reference to the volumes of the laws, and are in the habit of applying with great advantage to their superior judges for instruction and correction; the Governor-general in Council is unwilling to issue any positive directions before obtaining the opinion of the Sudder Courts upon the expediency of issuing an order embodying the effect of the opinions above expressed upon construction of law contained in circular orders, the principle of which would of course apply also to explanatory orders issued on such points by the district judges to the courts below them. His Lordship in Council therefore requests, that the courts be desired to report their opinions upon the practical effects of such a change in the system heretofore observed as has been now discussed, with reference to the observations adverse to the principle of that system which are stated in the preceding paragraph."

8. The Judges of both courts, replying to the call thus made upon them, were of opinion that their differences of opinion on constructions of law or practice, should no longer be referred to Government by either court, but that they should be decided by a majority of voices among the judges of both courts together.

9. But the two Sudder Courts did not agree as to the manner in which this necessary majority should be taken. For the permanent judges, being four in each court, it might happen that the number of opinions was equal on each side of a question. To provide for this difficulty several propositions were made. In Calcutta the judges agreed that the senior temporary judge should be called upon to decide. At Allahabad several of the judges had respectively different plans to propose. None agreed in the plan of the Calcutta court.

10. Both courts agreed that the subordinate judges should not be allowed to propose to them hypothetical cases for solution, and that instruction on points of law should not be asked for by subordinates, except in cases actually before them. It was agreed that the practice of giving instruction to subordinate judges upon cases actually depending, was fraught with many very prejudicial and inconvenient consequences; but that the prejudice and inconvenience would be still greater, if that practice were immediately abolished, owing to the present objectionable state of the law of special appeals.

11. This is what has been already alluded to as giving to the zillah judge the cognizance of special appeals from decisions of Principal Sudder Ameens, passed on regular appeals from Sudder Ameens and moonsiffs, and making the zillah judge's decision in such cases final. It was the opinion of the judges of both Sudder Courts, that this law required alteration, and that special appeals should all be heard by the Sudder Court, and by no other court. A similar opinion had been very lately expressed by the Law Commission, who remarked, that special

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special appeals, by their nature, are such as should be heard by the chief court of appeal, and not by any subordinate court.

12. It was found very difficult to lay down any good rule for obtaining decisions on disputed points of law by a majority of the two courts. To all the plans yet suggested there existed serious objections, and to any that could be proposed there would always be this, that no one case can be argued before both courts. The judges of one court must therefore always give their opinions without hearing the arguments, or seeing the parties interested, or their representatives.

13. What was required, then, was, that occasions for discussions among the judges of both courts, and decisions by them upon points of law, not brought before them in the regular course of appeal under such disadvantageous circumstances, should be cut off; and this it appeared might be done very effectually if the law of special appeal were altered so as to do away with all necessity for references by subordinate courts for instruction on points of law.

14. If this were established as the law and practice of the Sudder Court, the judges would refuse in future to give any legal constructions upon such points, except in cases actually before them in a regular appeal. In cases actually under trial, the legal points that might arise would be heard and decided in the course of the trial by one or more sitting judges, as the case might be; and such points would never be referred in or out of each court respectively, to any judge not hearing, or called in to hear the trial.

15. It might happen under this plan, that the decisions of one bench, on a particular point of law, would differ occasionally from those of another; but this, with the interested vigilance of advocates, the deference to the authority of another superior court, which had previously decided the same point, and which authority ought to be entitled to great weight in all judicial discussions, and the printed reports of decisions always before the court, could very seldom take place. When it did happen, it would be brought by either court to the notice of its own Government, and thence to that of the Legislative Council, for a new or a declaratory law, if such were thought to be needed. All those voluminous and inconclusive writings and discussions which now occupy the time of both courts, and too often that of the Supreme Government, would absolutely cease; and it was probable that the time saved to the courts in this manner would, after a short time, fully compensate for that taken up by the additional special appeals which the alteration in the new law would bring in.

16. In special appeals thus brought for the sake of ensuring, at least in each division of the Presidency, uniform administration of law, the Sudder Courts respectively ought not to be allowed to run into investigations unnecessary for that particular purpose, and certain to occupy an undue proportion of the time of the court. A special appeal should be admitted only for the trial of some special point or points of law, declared in the petition of appeal, and in the trial of the appeal only that particular point should be investigated and decided.

17. Upon the 19th October 1840, the judges of the Sudder Courts were consulted on the propriety of altering the law in the manner above mentioned, so as to obviate the necessity of references for constructions. They replied on the 8th January following, and were not unfavourable to the principle of the alteration. Meantime, a despatch was received from the honourable Court, No. 21 of 1841, containing the following observations:—

"We are of opinion, that it is incompetent to the Government in its executive capacity to decide points of law, or of legal practice, on which a difference of opinion may exist between the Sudder Courts at Calcutta and Allahabad. If the points are such as can be brought by appeal before the tribunal in the last resort, which is the Queen in Council, they must be considered as unsettled until they shall be adjudicated by that authority. On questions of practice it occurs to us, that when, after communication of the grounds of their respective sentiments between the two Sudder Courts, the difference of opinion is not removed, the points might be authoritatively settled by the decision of the majority of the judges of the two courts collectively. The authority of the Government, as it appears to us, can only either on correct principle, or with a satisfactory result, be interposed in its legislative capacity when the law may require to be declared or altered by a new Act of the legislature.

"On the subject of constructions of law, promulgated by the Sudder Court in circular orders for the guidance of the inferior tribunals, we entirely concur in

the

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the sentiments which you have expressed. The practice may be highly serviceable in aiding the judgment, and supplying the deficiencies of officers in the Judicial Department, as well as in securing uniformity in their proceedings, but it is liable to serious objection if it be found to withdraw the attention of the Sudder Court from the actual business before them, to hypothetical cases, raised by the ingenuity of persons speculating upon cases of judicature. We are therefore of opinion, that the only constructions of law by the Sudder Adawlut, which should be promulgated in circular orders for the guidance of the department, are such as may have arisen in the discharge of their appellate jurisdiction, and as may, before being circulated, have been reported for the information of Government."

18. Accordingly, Mr. Amos, on the 20th March 1841, laid before the Council a minute and draft Act (Enclosures Nos. 5 and 6) for the purpose of effecting the alteration required; and this draft, being published in the Gazette, produced a report from the Law Commissioners, dated 4th December 1841, to which important document (Enclosure No. 9) I am directed to request that you will solicit his Lordship's particular attention. It will be seen, that the Commissioners adopt entirely the principle of the draft, suggesting only certain modifications in it, and proposing to extend it to the three Presidencies. For this purpose they submitted an amended draft Act, which, with a few modifications subsequently made by the President in Council, is the draft now submitted for his Lordship's assent. Enclosure No. 16 is a Memorandum of the opinions on the measure by public functionaries and others, after it had been published in the Gazette. They are entirely favourable to the principle of the alteration, except in the case of the Allahabad Sudder Court, and the Lieutenant-governor, whose objections are answered at length in the Law Commissioners' Report.

19. It was made a question in the Council, subsequent to the receipt of the above opinions, whether the court, trying a special appeal, should enter upon the whole merits of the case, or should confine itself merely to the point of appeal, as certified on its admission. Mr. Prinsep supported the former plan, in his minutes, enclosed as Nos. 18 and 20. This, he argues, is the plan heretofore followed in the courts of this Presidency, and the Privy Council in Indian appeals, and its propriety is maintained upon grounds based entirely upon the defects of the law proceedings, and the complexity of the decrees of the lower courts, which are seldom decisions upon a single issue.

20. Mr. Amos, in his minutes, enclosed as Nos. 17 and 19, advocated the latter plan; *i.e.* that the court should confine itself in special appeals, merely to the point of appeal as certified on its admission. It would, Mr. Amos thought, be most objectionable to admit a case to appeal, because a judge finds in it a questionable point of law, and then, because it is so admitted, to enter into all matters of law and fact; to revise a question of fact because there happens, by accident, to be also a question of law. It appeared, from a note furnished by Mr. Millett to Mr. Amos, and by Mr. Amos submitted to the Council together with his minute, that such a course would, in the new state of things, be as impracticable, as it was in Mr. Amos's opinion faulty in principle, and such was the unanimous opinion of the Law Commissioners. Mr. Millett's note showed that there was a probability of about 1,000 special appeals per annum being thrown into the Sudder Court of Calcutta by the new Act, the present number disposed of being less than 450 of both kinds, regular and special. This, Mr. Amos thought, sufficient to prove that the Act would not work, if the judges were not limited to specific points in the trial of this class of appeals. But Mr. Prinsep, on the other hand, was convinced that the plan he advocated would not be found impracticable on the score of increased business.

21. The plan recommended by Mr. Amos is that preferred by the Law Commissioners; and it is that, I am directed to add, in the expediency of which the majority of the Council are agreed.

22. The Report of the Law Commissioners contains some suggestions connected with, but not absolutely belonging to this subject; one of them is, however, of great importance, that of causing the judges to write their judgments, and the grounds of them, in English, to be translated into the vernacular language, as is now the case at Madras. It is the purpose of his honour in Council to call upon the Law Commission to submit drafts of Acts for the introduction of this

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and the other proposed alterations, and on the receipt of their reply, to address his Lordship separately.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to the Government of India.

(No. 6 of 1842.)

Legis. Cons. 1 Feb. 1843. No. 5.

From the Junior Secretary to Government of India with the Governor General, to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, Legislative Department; dated Camp, Dirbah, 17 Jan. 1843.

Sir,

I am directed by the Right honourable the Governor-general of India to acknowledge the receipt of your letter under date the 16th December last, No. 323, with its accompaniments, and in reply, to transmit to you the enclosed assent of his Lordship to the Act "for amending the Rules of Special Appeals," recorded under this date.

I have, &c.
(signed) *C. G. Mansel,*
Junior Secretary to Government of India with the Governor-general.

Camp, Dirbah, 17 January 1843.

Legislative Department.

Camp, Dirbah, 17 January 1843.

Legis. Cons. 1 Feb. 1843. No. 6.

I do hereby, under section 70, 3 & 4 William IV., c. 85, give my assent to the proposed Act "for amending the Rules of Special Appeals," received from the honourable the President in Council in Mr. Officiating Secretary Halliday's letter, No. 323, dated 16th December 1842, in the form and wording of the draft hereunto appended.

Note:—The draft is exactly similar to the following Act, No. III. of 1843.

(signed) *Ellenborough,*
Governor-general.

Act No. III. of 1843,

Legis. Cons. 1 Feb. 1843. No. 7.

Passed by the Honourable the President of the Council of India in Council, on the 1st of February 1843, with the assent of the Right honourable the Governor-general of India.

An Act for amending the Rules of Special Appeals.

1. It is hereby enacted, that from and after the 1st day of May next, a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, from all decisions passed on regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage or practice, upon which there may be reasonable doubts.

2. And it is hereby enacted, that applications for special appeals shall not be admitted unless they are presented to the proper court as aforesaid, within the period limited for the presentation of regular appeals.

3. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.

4. And it is hereby enacted, that every application for a special appeal, duly presented to the proper court as aforesaid, shall be heard by a single judge of the court, in the presence of the special appellant, or his vakeel or agent; and it shall be competent to the judge, at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

5. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall,

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shall, at the same time, reduce the point or points to be determined to writing, in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court; and the special appeal shall then be brought on the file of the court, to be heard and determined in due course: Provided that it shall not be necessary to call for or refer to any part of the proceedings, the reading of which is not required for deciding the point or points of law stated in the certificate.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

7. And it is hereby enacted, that in every case of special appeal admitted as aforesaid, the Court of Sudder Dewanny Adawlut shall determine the point or points, certified as above enacted, and no other point or part of the case whatever.

8. Provided, that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate: Provided that such amendment shall relate only to the point or points originally stated in the certificate, and it shall not be lawful for the court to receive or add any new point or points.

9. And it is hereby declared, that the existing laws and regulations of the Presidencies of Bengal, Madras and Bombay, relating to special appeals, shall continue in force, so far as they are not inconsistent with the provisions of this Act.

10. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted and be pending in appeal before the said 1st day of May next, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

From the Indian Law Commissioners to the President of the Council of India in Council; dated 31 December 1842.

Legis. Cons. 1 Feb. 1843. No. 8.

Honourable Sir,

AGREEABLY to the request conveyed to us in the letter from Mr. Officiating Secretary Halliday, under date the 9th instant, we have prepared a draft of sections containing provisions to give effect to the recommendations offered in paragraphs 14, 15 and 16, 24, 25, 31 and 32 of our Report under date the 4th December 1841.

2. It appears to us that it will be most convenient to add these sections to the draft Act for Special Appeals, which accompanied the Report referred to, and, with that view, we have drawn them in their present shape, instead of framing them to form a separate Act or Acts, as directed in Mr. Halliday's letter.

3. We have taken this opportunity to prefix a preamble to the draft Act for Special Appeals, and to make a slight formal alteration in it, and we have now the honour to submit the modified draft, with the new sections added to it, in the order in which we think they should stand.

4. In paragraphs 14, 15 and 16 of our Report, which must be taken together, we meant to recommend, with regard to decrees, a measure as extensive as that which was introduced by sect. 15, Reg. XV. of 1816 of the Madras code; that is to say, that the English language should be used in the decrees of all courts which by their constitution must have English judges. This in all the Presidencies comprehends all courts above those which are held by Principal Sudder Ameens; viz. in Bengal, the Sudder Courts and zillah courts; in Madras (under the new system) the Sudder Court and the two orders of zillah courts, under judges and subordinate judges; in Bombay the Sudder Court (whose decrees by the present Regulations, are required to be written in English), and the zillah courts under judges and assistant judges.

5. By the same Regulation of the Madras code, all orders passed upon petitions by the Sudder Adawlut and the provincial courts (for which the new zillah courts will be substituted) are also required to be written in English; although we approve of this rule, we think that it may be inconvenient to introduce it generally to the full extent at once. The general rule we would recommend is, that all orders upon summary appeals and upon applications for special appeals, and for reviews of judgments passed by judges who are required

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quired to write their decrees in English, shall likewise be written in English, and also opinions recorded by judges of the Sudder Courts sitting singly, on matters which they are incompetent to decide without the concurrence of another judge, or which they may otherwise refer to another judge.

6. The provisions for these objects will be found in the sections marked 13 and 14, in the accompanying draft, which, as containing general rules, we have made applicable to all the Presidencies, prefixing a preamble to show how far they are already observed by the Madras courts and the Sudder Court of Bombay.

7. Section 15 provides, that in the Presidencies of Bengal and Bombay, appeals shall lie to the Sudder Courts from the decrees of courts subordinate to the zillah courts, in original suits for an amount not less than 10,000 Company's rupees. This provision gives effect to the recommendations in paragraphs 31 and 32 of our Report. It is not necessary for the Presidency of Madras, if, as appears from the draft of an Act for abolishing the provincial courts lately published, your honour in Council has determined that the courts subordinate to the zillah courts in that Presidency shall not have original jurisdiction to the above extent.

8. Section 16 provides for the appeals from decrees of Principal Sudder Ameens in the Presidency of Bengal, which, under the preceding section, will be withdrawn from the jurisdiction of the Sudder Courts.

9. Section 17 is intended to restrain the zillah judges in Bombay from referring appeals from Principal Sudder Ameens to assistant judges, as recommended in the 25th paragraph of our Report.

10. And section 12 abolishes the second regular appeal, which is allowed by the Bombay code, as recommended in paragraph 24.

We submit this our Report for the consideration of your honour in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Legis. Con 1 Feb. 1843 No. 9.

Modified Draft Act, referred to in 3d Paragraph of Letter from the Law Commission, under date 31 December 1842.

New.

Whereas it is expedient that second or special appeals from decrees passed on regular or ordinary appeals by competent courts, shall be admitted only with a view to the determination of questions of law, or of usage having the force of law, or of the practice of the courts, and that such questions shall be determined by the courts of highest authority.

Modified form.

1. It is hereby enacted, that from and after special appeals shall be admissible only by the Sudder Courts in all the Presidencies of India.

Modified form.

2. And it is hereby enacted, that a special appeal from a decree passed on a regular or ordinary appeal by a court competent to decide thereon, shall not be admitted by any Sudder Court, unless the decree appealed against shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage or practice upon which there may be reasonable doubts.

3. And it is hereby enacted, that an application for a special appeal shall not be admitted by any Sudder Court, unless it is presented to the court within the period limited for the presentation of regular appeals.

4. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed in the case.

5. And it is hereby enacted, that every application for a special appeal, duly presented to a Sudder Court as aforesaid, shall be heard by a single judge of the court, in the presence of the special appellant, or his vakeel or agent; and it shall be competent to the judge, at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall

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shall, at the same time, reduce the point or points to be determined to writing, in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course.

7. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

8. And it is hereby enacted, that in every case of special appeal admitted as aforesaid, the court shall determine the point or points certified as above enacted, and no other point or part of the case whatever.

9. Provided that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate.

10. And it is hereby declared, that the existing laws and Regulations of the Presidencies of Bengal, Madras and Bombay relating to special appeals, shall continue in force, so far as they are not inconsistent with the provisions of this Act.

11. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals, which shall have been admitted and be pending in appeal on the date specified in section 1, of this Act, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

12. And it is hereby enacted, in modification of sections 3 and 4, Regulation VII. of 1831, of the Presidency of Bombay, that when an appeal from a decree passed by a subordinate court in an original suit shall have been heard and determined by an assistant judge, under a reference from the judge of a zillah court, or when an appeal from a decree passed by an assistant judge in an original suit shall have been heard and determined by the judge of a zillah court, the decree of such assistant judge or zillah judge upon such appeal shall be final, unless there be grounds for a special appeal under this Act.

New. According to recommendation in para. 24 of Report, dated 4 Dec. 1841.

13. And whereas, by the Regulations of the Presidencies of Fort St. George and Bombay, the decrees of the Sudder Courts, and by the Regulations of Fort St. George, the decrees of the provincial and zillah courts, and the auxiliary courts under assistant judges, and the orders of the Sudder Court and provincial courts on petitions presented to them are required to be written in English; and it is expedient to prescribe a general rule for the use of the English language by the like courts in all the Presidencies; it is hereby enacted, that in all the Presidencies, all decrees, and all orders upon summary appeals, and upon applications for special appeals, and for reviews of judgment, which shall be passed by judges of the Sudder Courts, and by judges and subordinate or assistant judges of zillahs, shall be written originally in English, and that to every such decree or order shall be annexed a translation thereof in the vernacular language commonly used in the court wherein the suit to which the decree or order relates shall have been instituted, which translation shall be authenticated in the same manner as the original decree or order in the English language.

New. According to para. 14, 15 and 16 of the same.

14. And it is hereby enacted, that in every case in which a single judge of any Sudder Court shall have heard an appeal from any decree or order of a subordinate court, and shall record his opinion, and remit the case for a further hearing by another judge, such opinion shall be written by him in English.

15. And whereas in the Presidencies of Fort William in Bengal, and Bombay, courts subordinate to the zillah courts have original jurisdiction in suits for a value amounting to 10,000 Company's rupees and upwards, in which appeals may be preferred to Her Majesty in Council; and it is expedient that in all such cases the ordinary appeal should be heard and determined by the Sudder Courts; and it is expedient also that the ordinary appellate jurisdiction of the Sudder Courts should not embrace suits for a less amount decided originally by such courts: it is hereby enacted, that in the Presidencies of Fort William in Bengal, and Bombay, ordinary appeals from decrees passed by courts subordinate to the zillah courts in original suits for an amount or value not less than 10,000 Company's rupees, shall be preferred to the Sudder courts.

16. And it is hereby enacted, in modification of section 4, Act No. XXV. of 1837, that in the Presidency of Fort William in Bengal, all ordinary appeals from the decrees passed by Principal Sudder Ameens in original suits for an amount

New. According to para. 31 and 32.

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amount or value less than 10,000 Company's rupees, shall be preferred to the zillah courts.

New. According to para. 25.

17. And it is hereby enacted, in modification of section 2, Regulation VII. of 1831, of the Bombay code, that in the Presidency of Bombay appeals from decrees passed by Principal Sudder Ameens in original suits for an amount or value less than 10,000 Company's rupees, which shall be presented to the zillah courts, shall not be referred to assistant judges.

(signed) *J. C. C. Sutherland.*

(No. 8.)

Legis. Cons. 1 Feb. 1843. No. 10.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to the Indian Law Commission; dated 1 February 1843.

Gentlemen,

I AM directed by the honourable the President in Council to acknowledge the receipt of your letter, dated the 31st December last, submitting draft of sections to be added to the Appeal Act.

2. The assent of the Right honourable the Governor-general of India having been already obtained to the draft Act, as originally published, and it being desirable, on every account, that the law should come into operation without the delay which would be caused by another reference to his Lordship, in consequence of the additions proposed by the Commission, the honourable the President in Council has proceeded to pass the Act under this date; and I am desired to request that you will submit, for the consideration of the President in Council, a separate draft of Act containing provisions for introducing the amendments you proposed in your Report of the 4th December 1841.

I have, &c.

(signed) *F. J. Halliday,*

Officiating Secretary to the Government of India.

Fort William, 1 Feb. 1843.

(No. 5.)

Legis. Cons. 28 April 1843. No. 8.

From the Indian Law Commissioners, to the Honourable the President of the Council of India in Council; dated 23 February 1843.

Honourable Sir,

AGREEABLY to the request conveyed to us in Mr. Halliday's letter bearing date the 1st instant, we have the honour to submit, for the consideration of your honour in Council, drafts of two separate Acts, marked (A.) and (B.)

In the former will be found the provisions regarding the use of the English language, recommended in paras. 14, 15 and 16 of our Report, dated 4th December 1841. We have omitted the provision which we proposed in section 14 of the draft submitted with our letter dated the 31st December last, as it appears to be rendered unnecessary by the new Act II. of 1843.

In the draft (B.) we have introduced the provisions recommended in paragraphs 24, 25, 31 and 32 of the above Report.

We have, &c.

(signed) *C. H. Cameron.*
F. Millett.
D. E. Eliott.
H. Borradaile.

Indian Law Commission, 23 February 1843.

DRAFT ACT (A.)

Legis. Cons. 28 April 1843. No. 9. Enclosure.

WHEREAS by the codes of the Presidencies of Fort St. George and Bombay, the decrees of the Sudder Courts, and by the code of the Presidency of Fort St. George, the decrees of the provincial and zillah courts, and the auxiliary courts

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courts under assistant judges, and the orders of the Sudder Court and provincial courts, on petitions presented to them, are required to be written in English, and it is expedient to prescribe a general rule for the use of the English language by the like courts in all the Presidencies.

1. It is hereby enacted, that in all the Presidencies, all decrees, and all injunctions for the revision of decrees in regular suits, and all orders upon summary appeals, and upon applications for special appeals, and for reviews of judgment which shall be passed by judges of the Sudder Courts, or by judges of zillah and city courts, or by subordinate or assistant judges of zillahs, shall be written originally in English, and that to every such decree, injunction or order shall be annexed a translation thereof in the vernacular language commonly used in the court wherein the suit to which the decree or order relates shall have been instituted, which translation shall be authenticated in the same manner as the original decree or order in the English language.

Provided that nothing in this Act contained shall be construed to repeal or affect any Regulation of the code of the Presidency of Fort St. George, by which orders passed on petitions presented to provincial courts,* or to the Court of Sudder Adawlut, are required to be written in English.

(signed) *J. C. C. Sutherland,*
Secretary.

Draft Act (B.)

Legis. Cons. 28 April 1843. No. 10. Enclosure.

Whereas, in the Presidencies of Fort William in Bengal, and Bombay, courts subordinate to the zillah and city courts have original jurisdiction in suits for a value amounting to 10,000 Company's rupees and upwards, in which appeals may be preferred eventually to Her Majesty in Council, and it is expedient that in all such cases the ordinary appeal should be heard and determined by the Sudder Courts; and it is expedient also that in those Presidencies, in all cases for an amount or value less than 10,000 Company's rupees decided by Principal Sudder Ameens, ordinary appeals should be heard and determined by the judges of the zillah and city courts.

1. It is hereby enacted, that in the Presidencies of Fort William in Bengal, and Bombay, all ordinary appeals from decrees passed by courts subordinate to the zillah and city courts in original suits for an amount or value not less than 10,000 Company's rupees, shall be heard and determined by the Sudder Courts.

2. And it is hereby enacted, in modification of section 4, Act No. XXV. of 1837, and of section 2, Regulation VII. of 1831 of the Bombay code, that in the Presidencies of Fort William in Bengal and Bombay, all ordinary appeals from the decrees passed by Principal Sudder Ameens in original suits for an amount or value less than 10,000 Company's rupees, shall be heard and determined by the judges of the zillah and city court to which they are subordinate respectively.

3. And it is hereby enacted in modification of sections 3 and 4, Regulation VII. of 1831, of the Presidency of Bombay, that when an appeal from a decree passed by a subordinate court in an original suit shall have been heard and determined by an assistant judge, under a reference from the judge of zillah court, or when an appeal from a decree passed by an assistant judge in an original suit shall have been heard and determined by the judge of a zillah court, the decree of such assistant judge or zillah judge upon such appeal shall be final, unless there be grounds for a special appeal under this Act.

(signed) *J. C. Sutherland,*
Secretary.

Fort

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* *N.B.*—These words "Provincial Courts," to be omitted, in case the Act abolishing them was passed.

FORT WILLIAM, LEGISLATIVE DEPARTMENT, 10 March 1843.

Legis. Cons. 28 April 1843. No. 11.

THE following Draft of a proposed Act was read in Council for the first time on the 10th of March 1843.

ACT No. —— of 1843.

AN ACT concerning Appeals in the Presidencies of Fort William in Bengal, and Bombay.

1. WHEREAS in the Presidencies of Fort William in Bengal, and Bombay, courts subordinate to the zillah and city courts have original jurisdiction in suits for a value amounting to 10,000 Company's rupees and upwards, in which appeals may be preferred eventually to Her Majesty in Council, and it is expedient that in all such cases the ordinary appeal should be heard and determined by the Sudder Courts; and it is expedient also that in those Presidencies, in all cases for an amount or value less than 10,000 Company's rupees, decided by Principal Sudder Ameens, ordinary appeals should be heard and determined by the judges of the zillah and city courts.

It is hereby enacted, that in the Presidencies of Fort William in Bengal, and Bombay, all ordinary appeals from decrees passed by courts subordinate to the zillah and city courts in original suits for an amount or value not less than 10,000 Company's rupees, shall be heard and determined by the Sudder Courts.

2. And it is hereby enacted, in modification of section 4, Act No. XXV. of 1837, and of section 2, Regulation VII, of 1831, of the Bombay code, that in the Presidencies of Fort William in Bengal, and Bombay, all ordinary appeals from the decrees passed by Principal Sudder Ameens in original suits for an amount or value less than 10,000 Company's rupees, shall be heard and determined by the judges of the zillah and city courts to which they are subordinate respectively.

3. And it is hereby enacted, in modification of sections 3 and 4, Regulation VII. of 1831, of the Bombay code, that when an appeal from a decree passed by a subordinate court in an original suit shall have been heard and determined by an assistant judge, under a reference from the judge of a zillah court, or when an appeal from a decree passed by an assistant judge in an original suit shall have been heard and determined by the judge of a zillah court, the decree of such assistant judge or zillah judge upon such appeal shall be final, unless there be grounds for a special appeal.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India after the 10th day of June next.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

FORT WILLIAM, LEGISLATIVE DEPARTMENT, 28 April 1843.

Legis. Cons. 28 April 1843. No. 12.

THE following Draft of a proposed Act was read in Council for the first time on the 28th April 1843.

ACT No. —— of 1843.

AN ACT concerning the time at which, and the language in which the Decisions of the Judges in the Courts of the East India Company are to be written.

1. WHEREAS it is expedient that the decisions of courts of justice, and the reasons for the decisions, should be written and signed by the judge at the time of pronouncing his decision, and in the vernacular language of the judge.

It is hereby enacted, that in all the Presidencies, so much of all decrees as consists of the points to be decided, the decision thereon and the reasons for the decision, and all injunctions for the revision of decrees in regular suits, and all orders upon summary appeals, and upon applications for special appeals, and for reviews of judgment which shall be passed by judges of the Sudder Courts, or by judges of zillah and city courts, or by subordinate or assistant judges of zillahs,

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zillahs, shall be written originally in English, and signed by the judge or judges at the time of pronouncing such decision and orders, and shall be accompanied by a translation thereof in the vernacular language commonly used in the court wherein the suit to which the decree or order relates shall have been instituted, which translation shall be incorporated in the decree.

2. Provided, that nothing in this Act contained shall be construed to repeal or affect any Regulation of the codes of the Presidencies of Fort St. George and Bombay, by which the decrees of the Sudder Courts are required to be written in English, nor to repeal or affect any Regulation of the code of the Presidency of Fort St. George, by which the decrees of the provincial and zillah courts, and the auxiliary courts under assistant judges, and the orders of the Sudder Court and provincial courts on petitions presented to them, are required to be written in English.

3. And whereas it is expedient that, excepting as regards the language to be used, Principal Sudder Ameens, Sudder Ameens and moonsiffs should be guided by the same rules as are hereinbefore provided for the guidance of the superior judges.

It is hereby enacted, that in all the Presidencies so much of all decrees as consists of the points to be decided, the decision thereon, and the reason for the decision which shall be passed by Principal Sudder Ameens, Sudder Ameens or moonsiffs, shall be written originally in the vernacular language of such Principal Sudder Ameen, Sudder Ameen or moonsiff, and signed by such Principal Sudder Ameen, Sudder Ameen or moonsiff at the time of pronouncing such decision, and (in case such vernacular language shall not be the same as the vernacular language commonly used in the court wherein the suit to which the decree relates shall have been instituted) shall be accompanied by a translation thereof, in such last-mentioned vernacular language, which translation shall be incorporated in the decree.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India after the 28th day of July next.

(signed) *Fred. Jas. Halliday*,
Officiating Secretary to the Government of India.

Legis. Cons. 28 April 1843. No. 13.

From *F. J. Halliday*, Esq., Secretary to the Government of India, to Secretaries to the Government of Bengal (No. 33), and North Western Provinces (No. 107), and Chief Secretaries to the Government of Bombay (No. 108), and Madras (No. 106); dated 28 April 1843.

Sir,

I AM directed by the honourable the President in Council to transmit for submission to the the accompanying draft of a proposed Act, concerning the time at which, and the language in which, the decision of the judges in the courts of the East India Company are to be written, with a request that will favour the Supreme Government with any observations, or suggestions on its provisions in communication with the Sudder Court.

I have, &c.

(signed) *F. J. Halliday*,
Secretary to the Government of India.

Fort William, 28 April 1843.

Legis. Cons. 28 April 1843. No. 14.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to Chief Secretary to the Government of Bombay (No. 105), and Secretary to Government of Bengal (No. 32); dated 28 April 1843.

Sir,

I AM directed by the honourable the President in Council to transmit to you for submission to the the accompanying draft of a proposed Act concerning

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cerning appeals in the Presidencies of Fort William in Bengal, and Bombay, dated the 10th ultimo, with a request that his honour will favour the Supreme Government with any observations or suggestions on its provisions, in communication with the Sudder Court.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

Fort William, 28 April 1843.

Legis. Cons. 5 July 1843. No. 10.

From *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, to the Chief Secretary to the Government of Madras (No. 141), and Secretary to Government of North Western Provinces (No. 142); dated 28 June 1843.

I AM directed by the honourable the President in Council to request that you will draw the attention of the to Mr. Secretary Halliday's letter No. , dated the 28th April last, soliciting his opinion, in communication with the Sudder Court, on the provisions of the draft Act concerning the time at which, and the language in which, the decisions of the judges in the courts of the East India Company are to be written.

I have, &c.

(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

Fort William, 28 June 1843.

(No. 835.)

Legis. Cons. 29 July 1843. No. 3.

From Under Secretary to the Government of Bengal to *T. Davidson*, Esq., Officiating Secretary to the Government of India, Home Department; dated Fort William, 29 May 1843.

Judicial.

Sir,

I AM directed by the honourable the Deputy-governor of Bengal to forward, for the purpose of being laid before the Legislative Council of India, the accompanying copy of a letter, No. 887, dated the 12th instant, having reference to the draft of a proposed Act concerning the time at which, and the language in which, the decisions of the judges in the courts of the East India Company are to be written.

2. His honour concurs in the propriety of the Sudder Court's suggestions, and recommends the adoption of the proposed amendments.

I have, &c.

(signed) *A. Turnbull*,
Under Secretary to the Government of Bengal.

(No. 887.)

Legis. Cons. 29 July 1843. No. 4. Enclosure.

From the Register of the Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal in the Judicial Department; Fort William, 13 May 1843.

Sudder Dewanny Adawlut. Present: R. H. Rattray, J. Tucker and J. F. M. Reid, Esqrs., Judges.

Sir,

I AM directed to request that you will submit, for the consideration of his honour the Deputy-governor, the following observations relative to the draft of a proposed Act concerning the time at which, and the language in which, the decisions of the judges in the courts of the East India Company are to be written.

2. While

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2. While the court cordially approve of the principle of the Act, they are of opinion, that as a first step in this Presidency towards the introduction of the system of making the judges record their own orders, it is somewhat too extensive, as embracing within its range orders, the recording of which by the judge himself is unnecessary, and which might occupy much time without any corresponding benefit.

3. From the general tenor of the Act, the court conclude that it is not intended to include any cases of a miscellaneous nature, for none are mentioned in that part of the Act (see 3), which refers to the courts of the uncovenanted judges. But the words, and "all orders upon summary appeals," will include some cases of that nature, such for instance, as the appeals under Regulation VII. of 1825, in the courts of appellate jurisdiction. Should it, therefore, be determined to include this class of cases in the Act, the court would suggest that after the words "summary appeals" be added the words, "from orders passed in regular suits or appeals."

4. The Court, however, would suggest that "orders upon summary appeals" be struck out of the Act. These cases involve only an inquiry into the fact of whether the penalty of default has been incurred in the lower court or not. The decision of this requires but very little exercise of the judgment, and an order in the vernacular language seems to the court fully sufficient to meet the exigency of such cases.

5. Again, in regard to applications for special appeals, applications which are rejected will, for the most part, require no other order than that no ground for the admission has been shown under Act III. of 1843, and that consequently they are rejected. An order in the vernacular language appears to the court to be quite sufficient for this purpose. In regard to applications admitted, a certificate of the grounds of admission is already required by section 5, Act III. 1843, and a further English record by the judge would in such cases be superfluous.

6. The court suggest that these two classes of orders be struck out of the Act, and that its operation be limited to judgments passed in original suits, and regular and special appeals, to all injunctions for the revision of decrees, and to orders passed on applications for review of judgment. This will include all orders of greatest importance, and admit more time being devoted to them, than if the judges were required to write their orders in English on numerous cases of comparatively minor importance.

7. The court conceive it will be scarcely possible in all cases to accompany their judgments in English with a translation in the vernacular language. They would therefore suggest that the words "shall be accompanied by a translation thereof in the vernacular language," in section 1, be exchanged for "shall be translated into the vernacular language, &c.;" a corresponding alteration to be made at the close of the last section.

I have, &c.
(signed) *J. Hawkins,* Register.

(True copy.)

(signed) *A. Turnbull,*
Under Secretary to the Government of Bengal.

(No. 1302.—No. 34 of 1843.)

From the Secretary to the Government of Bombay, to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India in the Legislative Department; dated Bombay Castle, 20 June 1843.

Legis. Cons. 29 July 1843. No. 5.

Sir,

I AM directed by the honourable the Governor in Council to acknowledge the receipt of your letter, No. 108, dated the 28th April last, with enclosure, and

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to transmit to you for submission to the honourable the President in Council, copy of a letter from the Register of the Sudder Dewanny Adawlut, dated the 2d inst., submitting the opinion of the judges of that court, in respect to the proposed Act concerning the time and the language in which the decisions of the judges of the courts of the East India Company are to be written.

2. With reference to the correspondence quoted in the margin,* I am instructed to forward, for the information of his honour in Council, copy of circular order issued by the judges of the Sudder Court, and of the Government letter, No. 630, dated the 20th of February 1841, regarding the present mode of keeping an English record of magisterial trials under this Presidency.

I have &c.,
(signed) *W. Escombe,*
Secretary to the Government.

(No. 1083.)

Legis. Cons. 29 July 1843. No. 6. Enclosure.

From the Register of the Sudder Dewanny Adawlut, to the Secretary to Government, Judicial Department; dated 2 June 1843.

Present:
A. Bell,
W. Sinason,
and
B. Rutt, Esqrs.

Sir,

I AM directed to acknowledge the receipt of your letter, dated the 25th ultimo, No. 1047, with accompaniments, being copy of a letter from the Secretary to the Government of India in the Legislative Department, enclosing draft of a proposed Act concerning the time at, and the language in which the decisions of the judges in the courts of the East India Company are to be written, and requesting the opinion of the court on the provisions of the same.

2. In reply, I am instructed to state, that the judges consider the object of the proposed Act a desirable one, and that they see no objection to its provisions.

I have, &c.
(signed) *W. H. Harrison,* Register.

Bombay, Sudder Dewanny Adawlut,
2 June 1843.

(True copy.)
(signed) *W. Escombe,*
Secretary to Government.

DRAFT of CIRCULAR to the MAGISTRATES.

Legis. Cons. 29 July 1843. No. 7 Enclosure.

WITH a view to obviating as far as possible the inconvenience and delay arising from the present lengthened mode of procedure as regards the English record in magisterial cases, adopted by many of the magisterial authorities, I am desired by the Judges of the Sudder Foujdarree Adawlut, with the sanction of Government, to direct that in future such record be kept with the greatest possible brevity compatible with the essential attainment of the objects indicated in the instructions conveyed in the court's circular of the 8th March 1837; viz. a clear but concise exhibition of the charge, plea, worth of the evidence, sentence and grounds thereof.

No.

* Letter to the Government of India, No. 563, dated 10th March 1835; Letter to the Government of India, No. 2618, dated 6th December 1838 (paragraphs 11 to 15); Letter to the Government of India, No. 2171, dated 13th August 1840.

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(No. 630 of 1841.)

From the Secretary to the Government of Bombay, to the Register of the Sudder Foujdaree Adawlut; dated 20 February 1841.

Sir,

In acknowledging the receipt of your letter, No. 142, dated the 22d ultimo, I am directed to inform you that the honourable the Governor in Council is pleased to approve of the draft of a proposed circular therewith submitted, modifying the instructions contained in the circular of the 8th of March 1839, relative to the mode of keeping the English record of proceedings in trials held before the magisterial authorities, and to authorize the judges of the Sudder Foujdaree Adawlut, to promulgate it for the information and guidance of those functionaries. Judicial Dep.

I have, &c.

(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle, 20 February 1841.

(True copies.)

(signed) *W. Escombe*,
Secretary to Government.

(No. 3105 of 1843.)

From *R. N. C. Hamilton*, Esq., Secretary to the Government, North Western Provinces, to *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, Home Department, Legislative; dated 3 July 1843. Legis. Cons. 29 July 1843. No. 8.

Sir,

With reference to your letter, No. 107, dated the 28th April last, I am directed to transmit the accompanying copy of a letter, No. 1131, from the officiating register of the Sudder Dewanny Adawlut, dated the 7th June, and to state that the honourable the Lieutenant-governor is in favour of the proposed Act concerning the time at which, and the language in which, the decisions of the judges in the courts of the East India Company are to be written. Judicial Dep.

I have &c.

(signed) *R. N. C. Hamilton*,
Secretary to Government, North Western Provinces.

Agra, 3 July 1843.

(No. 1 in No. 3105 of 1843—No. 1131 of 1843.)

From *G. F. Edmonstone*, Esq., Officiating Register to the Court of Sudder Dewanny Adawlut, Allahabad, to *R. N. C. Hamilton*, Esq., Secretary to the Government of North Western Provinces, Agra; dated Allahabad, 7 June 1843. Legis. Cons. 29 July 1843. No. 9. Enclosure.

Sir,

I am directed to acknowledge the receipt of your letter, No. 2726, dated 30th ultimo, forwarding for the opinion of the court, a draft Act concerning the time at which, and the language in which, the decisions of the judges in the courts of the East India Company are to be written, and in reply to signify the court's entire approval, both of the principle and the provision of the proposed enactment, Sudder Dewanny Adawlut, North Western Provinces. Present: R. Taylor, G. P. Thompson, and F. Currie, Esqrs., Judges.

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ment, at the same time the court deem it expedient to point out that the requirements of the new law must in some degree necessarily produce delay in the disposal of civil business.

I have, &c.
(signed) *G. F. Edmonstone,*
Officiating Register.

Allahabad, 7 June 1843.

(True copy.)
(signed) *R. N. C. Hamilton,*
Secretary to Government, North Western Provinces.

(No. 335.)

Legis. Cons. 29 July 1843. No. 10.

From *J. F. Thomas*, Esq., Secretary to Government, to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India; dated Fort St. George, 8 July 1843.

Sir,

Judicial Dep.

I AM directed by the Most noble the Governor in Council to state, in reply to your letter of the 28th April last, No. 106, that the judges of the Sudder Adawlut have intimated that they have no observations to offer on the provisions of the proposed Act concerning the time at which, and the language in which the decisions of the judges of the courts are to be written.

I have, &c.
(signed) *J. F. Thomas,*
Secretary to Government.

Fort St. George, 8 July 1843.

ACT No. XII. of 1843.

Legis Cons. 29 July 1843. No. 11.

Passed by the Right honourable the Governor-general of India in Council, on the 29th July 1843.

AN ACT concerning the Time at which, and the Language in which the Decisions of the Judges in the Courts of the East India Company are to be written.

WHEREAS it is expedient, that the decisions of courts of justice, and the reasons for the decision, should be written and signed by the judge at the time of pronouncing his decision, and in the vernacular language of the judge.

1. It is hereby enacted, that in all the Presidencies, so much of all decress as consists of the points to be decided, the decision thereon, and the reasons for the decision, and all injunctions for the revision of decrees in regular suits, and all orders for reviews of judgment, which shall be passed by judges of the Sudder Courts, or by judges of zillah and city courts, or by subordinate or assistant judges of zillahs, shall be written originally in English, and signed by the judge or judges at the time of pronouncing such decision and orders, and shall be translated into the vernacular language commonly used in the court wherein the suit to which the decree or order relates shall have been instituted, and the translation shall be incorporated in the decree.

2. Provided, that nothing in this Act contained shall be construed to repeal or affect any Regulation of the codes of the Presidencies of Fort St. George and Bombay, by which the decrees of the Sudder Courts are required to be written in English, nor to repeal or affect any Regulation of the code of the Presidency

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sidency of Fort St. George, by which the decrees of the provincial and zillah courts, and the auxiliary courts under assistant judges, and the orders of the Sudder Court and provincial courts on petitions presented to them, are required to be written in English.

And whereas it is expedient that, excepting as regards the language to be used, Principal Sudder Ameens, Sudder Ameens and moonsiffs, should be guided by the same rules as are hereinbefore provided for the guidance of the superior judges.

3. It is hereby enacted, that in all the Presidencies, so much of all decrees as consists of the points to be decided, the decision thereon, and the reason for the decision, which shall be passed by Principal Sudder Ameens, Sudder Ameens or moonsiffs, shall be written originally in the vernacular language of such Principal Sudder Ameen, Sudder Ameen or moonsiff, and signed by such Principal Sudder Ameen or moonsiff at the time of pronouncing such decision; and (in case such vernacular language shall not be the same as the vernacular language commonly used in the court wherein the suit to which the decree relates, shall have been instituted) shall be translated into such mentioned vernacular language, and the translation shall be incorporated in the decree.

(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

(No. 951.)

From Secretary to the Government of Bengal to *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, Home Department; dated Fort William, 26 June 1843.

Legis. Cons. 6 Jan. 1844. No. 19.

Sir,

Judicial.

With reference to your letter, No. 32, dated the 28th April last, forwarding a draft Act concerning appeals in the Presidencies of Fort William in Bengal, and Bombay, I am directed by the honourable the Deputy-governor of Bengal to forward, for submission to the President in Council, copy of a letter from the Register to the Residency Sudder Court, No. 953, dated the 2d instant, stating the court's objections to the draft Act in question, in which his honour fully concurs.

2. The weight of sessions' business is so great at present, that it is found very difficult for a civil and session judge to perform the duties expected of him on the civil side of the court, which this draft Act would add to.

3. The observations of the court upon the effect of appeal from the uncovenanted to the covenanted zillah judge, are very worthy of attention. There is much reason, his honour thinks, to doubt of the utility of the present system of appeal, which is often looked upon by the parties in the light of a mere lottery. He fully agrees with the court, that in order to the complete efficiency of the administration of justice, the appeal should be to a court consisting of two officers of judicial experience; but he does not perceive such great difficulties in the way of this improvement as seem to be anticipated by the Sudder.

4. It does not appear to his honour by any means impossible to establish in each zillah an appellate bench, consisting of the zillah judge and two Principal Sudder Ameens; and he thinks there is a large class of appeal cases, the trial of which might with great benefit be always referred to such a tribunal.

I have, &c,
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

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(No. 953.)

Legis. Cons. 6 Jan. 1844. No. 20.

From the Register of the Sudder Dewanny Adawlut to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; Fort William, 2 June 1843.

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker and J. F. M. Reid, Esqrs., Judges.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 746, dated 17th ultimo, transmitting for the court's opinion a "Draft concerning appeals in the Presidencies of Fort William in Bengal, and Bombay," and to request that you will submit the following observations for the consideration of his honour the Deputy-governor.

2. It will be admitted as a safe and correct principle in the administration of justice, that courts of appellate jurisdiction should be extremely cautious in rejecting evidence which has been admitted by the court by which the witnesses have been examined, and in reversing conclusions based upon such evidence. It will further be admitted, that a court vested with power to decide in appeal upon matters of fact, upon which the court of original jurisdiction has already decided, should be presided over by officers possessed of greater experience and superior judgment, and in the main competent to pronounce a more correct opinion upon such matters of fact than the functionaries from whose decisions the appeals are preferred.

3. Now, without the slightest disparagement to the officers at present constituting the body of zillah judges under the court's control, the court cannot say that the judges possess these qualities in so superior a degree as to justify the court in recommending the present proposed extension of their appellate jurisdiction. It is not in the nature of things that they should. The judge of a day may be called upon to hear appeals from the decision of the Principal Sudder Ameen of 10 years' standing, and who, under the present system, must have passed through the lower grades of moonsiffs and Sudder Ameen. The advantages of experience and acquaintance with civil procedure may be all on the side of the Principal Sudder Ameen, who, it may be further observed, examines the witnesses to matters of fact, which the appellate court does not, and who, from his birth, habits and education, is for the most part more competent to pronounce correctly on the credibility or otherwise of the evidence produced before him.

4. This is a matter of serious consideration under a law which provides that the judges' verdict in appeal on all matters of fact shall be final, and not open to further inquiry.

1. Number of Cases in which the Judgments of the Lower Courts have both been Confirmed.	2. Number of Cases in which both Reversed.	3. Number of Cases in which the Decision of the Principal Sudder Ameen has been Confirmed, and that of the Judge Reversed.	4. Number of Cases in which the Decision of the Principal Sudder Ameen has been Reversed, and that of the Judge Confirmed.
84	35	64	63

5. The marginal statement shows the number of special appeals which have been decided on their merits, in the Courts of Sudder Dewanny Adawlut during the years 1840, 1841 and 1842, exclusive of those which have been remanded for re-investigation; it will be borne in mind that every description in column 3, must have been passed by at least two judges of the Sudder Court, while every decision in column 4, may have been passed by only one.

6. It may be urged as an objection to the court's argument, that if the court of primary jurisdiction is the best judge of facts, the appeal to the zillah judge in every case decided by every grade of the uncovenanted judges, had better be taken away.

7. This conclusion does not, in the judgment of the court, by any means follow. Under the present constitution of the uncovenanted service, the court are of opinion that an appeal from their decisions to some superior court is quite necessary. The very existence of the right of appeal has a powerful effect upon the proceedings of the lower courts, and tends no doubt to increase the number of correct judgments.

8. But the court are of opinion, that in order to the complete efficiency of the administration of civil justice, the appeal should be to a court consisting of two officers

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officers of judicial experience. This, however good in theory, cannot be practically carried into effect. The appeal to the single judge is therefore a matter of necessity in regard to the vast majority of cases which are tried in the several courts of the country.

9. At the same time there are some cases which at present have the benefit of an appeal to a court composed of the most experienced judicial covenanted officers, and the decision of the lower court in which cannot be reversed, except by a court consisting of three judges. Keeping in view, then, their idea of what the courts of appeal ought to be, the court see in the proposed Act a departure from their standard of efficient administration, instead of any approximation to it.

10. The only argument the court see in favour of the proposed Act, is one founded upon consistency, in allowing a second appeal in every case tried in the Company's courts. But they do not consider this as sufficient to overrule the objections to the Act which appear to the court to exist.

I have, &c.

(signed) *J. Hawkins*, Register.

(True copy.)

(signed) *Fred. James Halliday*,
Secretary to the Government of Bengal.

(No. 167.)

From *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, to *L. R. Reid*, Esq., Chief Secretary to the Government of Bombay; dated 12 August 1843.

Legis. Cons. 6 Jan. 1844. No. 21.

Sir,

I AM directed by the Right honourable the Governor-general in Council to request that the Report on the provisions of the draft Act concerning appeals in the Presidencies of Fort William in Bombay, solicited in Mr. Secretary Halliday's letter, No. 105, dated the 28th April last, may be forwarded on an early date.

Present: J. Pyne, W. Simpson and B. Hutt, Esqrs.

I have, &c.

(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

(No. 50 of 1843.)

From the Secretary to the Government of Bombay to *F. J. Halliday*, Esq., Officiating Secretary to the Government of India in the Legislative Department; Bombay Castle, 14 August 1843.

Legis. Cons. 6 Jan. 1844. No. 22.

Sir,

I AM directed by the honourable the Governor in Council to acknowledge the receipt of your letter, No. 105, dated the 28th of April last, with its enclosures, and to transmit to you, for submission to the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the deputy-register of the Sudder Dewanny Adawlut, dated the 4th instant, submitting the opinion of the judges of that court in respect to the proposed Act concerning appeals in the Presidencies of Fort William in Bengal, and Bombay.

I have, &c.

(signed) *W. Escombe*,
Secretary to Government.

(No. 1521 of 1843, Judicial Department.)

Legis. Cons.
6 Jan. 1844.
No. 23.

To the Secretary to Government.

Sir,

In reply to your letter, No. 1048 of the 25th May last, transmitting for any remarks or suggestions the court might have to make thereon, a printed copy of a proposed Act concerning appeals in the Presidencies of Fort William in Bengal, and Bombay, I have the honour, by direction of the judges, to observe that a practical knowledge of the numerous instances in which the decrees of native judges have been upheld on appeal by the Sudder Dewanny Adawlut, where the points, however, upon which the reversal by the European zillah judges turned would not justify the admission of a special appeal under the rules recently promulgated in Act III. of 1843, leads the court to apprehend that rendering final by enactment a decision by an assistant judge, unless an officer of very matured experience to his standing in judicial matters, would operate unfavourably to the end of justice.

2. In expressing this fear, however, the Court, I am instructed to add, would respectfully observe, that a remedy against the evil above alluded to manifestly exists in the power which the honourable the Governor in Council possesses of withholding the appellate jurisdiction from unexperienced assistants.

3. In other respects I am instructed to add, the provisions of the draft Act under consideration, viewed in connection with the modifications which have been introduced in regard to the admission of special appeals, appear to the court well calculated to meet the objects in view.

I have, &c.

Bombay Sudder Dewanny Adawlut,
4 August 1843.

(signed) *S. Babington,*
Deputy Register.

— No. 6. —

FOR RENDERING EUROPEANS AMENABLE TO THE CRIMINAL LAW ADMINISTERED IN THE MOFUSSIL.

No. 6.
Europeans amenable to Criminal Law of Mofussil.

EXTRACT from a Narrative of the Proceedings of the Government of the North Western Provinces during the Third Quarter of the Year 1840, in the Judicial Department, under date the 9th December 1840.

(No. 8.)

67. THE officiating magistrate of Benares having committed a British-born subject to take his trial in the Supreme Court of Judicature, was informed that the Government would defray the expense of the prosecution, and authorized to charge the expense incurred in forwarding the prisoner to Calcutta, in his contingent bill.

Benares District. Proceedings, July 1840, Nos. 1, 4, and 6.

EXTRACT from a DESPATCH from the Honourable the Court of Directors to the Government of India, in the Judicial Department; dated 14th December 1842.

(No. 16.)

26. THIS case of a British-born subject sent from Benares to be tried at Calcutta on a charge of theft, serves to show the necessity for giving jurisdiction over such offences to local tribunals.

(67.) Charge incurred by the officiating magistrate of Benares for forwarding a British-born subject to take his trial before the Supreme Court.

(No. 1666.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Legis. Cons. 29 November 1841. No. 14.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government the accompanying letter and its annexations, from the magistrate of the 24-Pergunnahs (No. 848 of the 28th ultimo), on the subject of contempt of the Honourable Company's courts by British-born subjects.

Judicial Department.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William, 9 November 1841.

P.S.—Please to return the enclosures.

(No. 848.)

From *R. Torrens*, Esq. Magistrate of Zillah 24-Pergunnahs, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Legis. Cons. 29 November 1841. No. 15.

Sir,

ADVERTING to the draft of the Act read in the Legislative Department on the 18th of this month, to empower magistrates and certain other officers to fine or imprison for contempt of court, I beg leave to submit for the consideration of the Right honourable the Governor, that obstructions to justice may be wilfully occasioned by individuals in other ways than are contemplated by the proposed Act.

Enclosure.

2. The cases I particularly refer to, are those of British subjects refusing to be bound over to prosecute or to attend, after being duly subpœnaed, in the courts of the civil or criminal authorities presiding in the Honourable Company's courts. I beg to enclose a copy of a letter to the Sudder Nizamut Adawlut, dated the

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24th April 1841, regarding a prosecutor in this court, who I was unable, by law, to compel to prosecute a native accused by him of theft. I also enclose a copy of the opinion given by the advocate-general on the subject; and I respectfully submit that the summary power referred to by Mr. Peel, might very advantageously be vested by the proposed law in magistrates, judges, and other officers, to whom it is intended to relate.

3. I have also to submit an extract, paragraphs 1 & 2, of a letter written to the Honourable Company's solicitor by me, on the 11th of June last, regarding a British subject who was duly subpœnaed to attend to give evidence in this court, to which process no obedience was rendered. The advocate-general's opinion was obtained in this case; a copy of his opinion I have the honour to forward. The provisions of the Act XXIII. of 1840 were, as far as I can understand, strictly observed; and I humbly conceive that, by non-obedience to this process, the party guilty of disobedience thereby obstructed justice, and that it would be expedient to vest officers presiding in Company's courts with power to fine, or, in default of payment, to imprison for such contempt, without having recourse to the more tedious and expensive process of having such contempts visited by the Supreme Court.

4. Similar obstructions to justice may be thrown in the way by persons, British subjects, refusing to obey a summons; by such persons escaping, after being arrested by warrant, from the custody of constables or the police burkundauzes; or, by such persons refusing to be bound over to give evidence before the Supreme Court, the court of the sessions' judge, or to remain daily in attendance at a magistrate's court, to give evidence in cases pending therein. I submit, for the consideration of his Lordship, that time, labour, and expense would be avoided, were magistrates vested with the power to punish for such contempts by British subjects, themselves, instead of, as now, having recourse to Her Majesty's Supreme Court.

I am, &c.

Zillah 24-Pergunnahs,
27 October 1841.

(signed) *R. Torrens,* Magistrate.

(No. 324.)

From *R. Torrens,* Esq. Magistrate, to *J. Hawkins,* Esq. Register to the Court of Nizamut Adawlut, Fort William.

Sir,

I HAVE the honour to request that you will submit this letter for the consideration of the Sudder Nizamut Adawlut, whose opinion I respectfully request on the following point:

2. *A.*, a British subject, and commander of a vessel lately arrived from London, but now, or a short time ago, undergoing repair in the Hourah Dock, in this jurisdiction, had 10 sovereigns stolen from him, from his cabin, it is alleged by *B.*, his khitmutgar, a native of Bengal, who was put on his trial before me. *A.*, when the case came on yesterday, informed me that his ship was to leave Calcutta for London on Tuesday next, before which time it is not possible that I can come at sufficient evidence to enable me to decide the case. Can I, I would ask the court, as a magistrate of one of the Honourable Company's courts, under these circumstances bind over *A.* to continue in attendance at this cutcherry until I conclude the case? I humbly conceive I ought to be invested with such powers, more especially in a district where so many Europeans are resident. Cases are constantly occurring where it is desirable for me to exercise the power; but I am not aware that I could compel a British subject, if recusant, to enter recognizances to continue to appear until permitted by me to depart.

3. In the case I have cited, I deemed that the best course for me to pursue was, to desire *A.* to appoint an attorney to conduct the case for him when he left; but though I was obliged to do this, it still is objectionable, inasmuch as it leaves the case to be tried without the prosecutor being present; and in the absence of power on my part to oblige *A.* to nominate a mooktyar, or to remain in attendance, it will rest with him whether he will pay attention to my suggestion or not.

I am, &c.

Zillah 24-Pergunnahs,
24 April 1841.

(signed) *R. Torrens,* Magistrate.

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ADVOCATE-GENERAL'S OPINION.

I THINK that such magistrates of the mofussil as are also in the commission of the peace have authority to bind by recognizance British subjects to keep the peace and to be of good behaviour; but that they derive this power from their commission only.

I think that those magistrates who are not in the commission have not power to take this recognizance from a British subject.

I think that the mofussil magistrates, whether in the commission of the peace or not, have power by law to take recognizance to prosecute or give evidence from a British subject preferring a criminal charge, or as necessary witness upon such a charge preferred before them; and I think that such British subject refusing to be bound acts illegally, and commits a contempt and an offence against the administration of justice, for which he is liable to be proceeded against criminally, by indictment or information before the Supreme Court; but the mofussil magistrate has not, in my opinion, power either to fine or imprison him as for a contempt, or otherwise to act compulsorily against him for such refusal.

19 May 1841. (signed) *Lawrence Peel.*

EXTRACT Paragraphs 1 & 2 of Letter written to the Honourable Company's Solicitor, on the 11th June 1841.

1. I HAVE the honour to enclose a subpœna which was issued from this court, and duly served on Henry Alloway (whom I believe to be a British subject), commander of the Nautilus, a vessel in the river, and lying within the jurisdiction of the Supreme Court. This process, dated the 31st ultimo, was duly served on the said Alloway; in corroboration of which service I enclose for your perusal the deposition of the sheriff's officer, Charles Read, who served it; and also translation of the deposition on oath of Edoo, who is now a prisoner confined in the gaol of this zillah, charged with theft, and who named Alloway as a witness in his defence. Further translations of the deposition of Mungloa Burkundauze, and of Chuckoo Chuprassee, whose evidence also goes to prove the service of this process.

2. As the witness named in this process has not attended in accordance with it, or pleaded any reason for not doing so, I request you to say whether or not he may be criminally prosecuted in the Supreme Court. I humbly conceive that he has been guilty of a contempt, and of an offence against the administration of justice. I am not however, I believe, either as magistrate of this district or as a justice of the peace, empowered to visit this contempt, for which the Supreme Court only, on a criminal indictment or information, can punish the person who has committed it.

(True extract.)
(signed) *R. Torrens,* Magistrate.

From *Lawrence Peel,* Esq. to the Company's Solicitor.

Dear Sir,

I HAVE read over Mr. Torrens' letter to you, and the papers which accompany it. It does not appear by these depositions, or by Mr. Torrens' letter, or in any other way, whether the provisions of the fourth section of the Act No. XXIII. of 1840 have been complied with; if they have, then the party disobeying may be attached for a contempt of the Supreme Court. But if the case be not brought within that provision of that statute, the party disobeying could not be subjected to the summary jurisdiction of that court. Whether a party disobeying the process of a mofussil court, summoning him as a witness on a criminal trial for a defendant, commits such an offence against the administration of justice as subjects him to indictment or information, is a question of some nicety, and must depend on the circumstances of each particular case. He might be an important witness, or his evidence might be merely and totally irrelevant. His disobedience under all circumstances where subject to the process, would be contempt of the court ordering him to appear; but in this case, unless the process were properly tacked and served, no contempt has been incurred of any court at all; and if it

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have been, then the disobedience is a contempt of the Supreme Court only, and should, if proceeded against at all, be proceeded against summarily, by motion for a contempt. Until further information be obtained I cannot advise any proceedings; and it appears to me that a proceeding of this kind involves so many and important considerations that it is improper to take any step in it, unless upon a direct reference to you from the Government.

Yours, &c.

16 June 1841. (signed) *Lawrence Peel.*

(No. 1676.)

Legis. Cons. 29 November 1841. No. 16.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration of the Supreme Government, the accompanying extract from a despatch (No. 9 of 1841) from the Honourable the Court of Directors, together with copy of the documents commented upon.

Para. 19.

I have, &c.

Fort William, 2 November 1841. (signed) *F. J. Halliday*, Secretary to the Government of Bengal.

EXTRACT of a Letter from the Honourable the Court of Directors, No. 9 of 1841, dated the 18th August 1841.

(75 to 77.) Accidental death of a native in the district of Tirhoot, from the discharge of a fowling-piece by Mr. Wyatt, an indigo planter of Tirhoot.

19. THE unsatisfactory manner in which this case was disposed of, affords an additional instance of the urgent want of tribunals for the trial of British-born subjects in the mofussil, charged with heinous offences. We trust that at no distant period this defect may be supplied.

(No. 17.)

Legis. Cons. 29 November 1841. No. 17. Enclosure.

From *W. T. Trotter*, Esq. Magistrate and Justice of the Peace at Tirhoot, to *F. J. Halliday*, Esq. Secretary to Government, Fort William.

Sir,

IN conformity with the provisions of Regulation XV. of 1806, I have the honour to submit for the information and orders of the honourable the Deputy-governor of Bengal, my proceedings in the case of Mossummat Joomnee and Meherban prosecutors, *versus* Mr. Wyatt, a British subject, on a charge of having shot one by name Faqueerah, husband of the former and brother to the latter, with a ball discharged from a fowling-piece.

2. The circumstances of the case are simply as follows:—On the 12th of November last the thanadar of Reegah reported that intelligence had been received at the thannah of the death of one Faqueerah, who had, the informant stated, been shot by Mr. Wyatt, an indigo planter residing at Bhugwanpore factory, and that he was on the point of proceeding to the factory to hold inquiries; upon which he was directed by me to investigate the matter thoroughly, that no material points should be omitted, and to forward the body for examination, which was done, together with the inquest proceedings; and on the 14th idem the thanadar reported the case at length, of which the following is a summary:—That the said Faqueerah was cutting grass near a sugar-cane field in a ditch, at which time Mr. Wyatt made a wager with Mr. Brodie, who was with him at the time, that he would shoot a sheep which was in the field; he fired at the sheep, but missed it and hit Faqueerah, who was cutting grass in the ditch, from the effects of which he died; and that from the depositions of the people at that spot, and the heirs of the deceased, it appeared that he was accidentally shot; nor did the heirs adduce any proof before him to show that the occurrence was otherwise than accidental.

3. On the 15th idem Mr. Wyatt voluntarily delivered himself up, and requested that his depositions might be taken, as also Mr. Brodie's and his bearers, whom he

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he had brought with him to establish his innocence, and that the occurrence was purely accidental. This was immediately done, the depositions of the two former in English, and those of the latter in Oordoo. On this Mr. Wyatt was bailed by me, himself on a personal recognizance of 5,000 rupees, and two sureties of 5,000 rupees each, to appear when called upon; and intimation was sent to the heirs of the deceased to repair to the sudder station to bring forward whatever charges they had to urge against Mr. Wyatt.

4. On the 17th of the same month Mossummat Joomnee, wife of the deceased, appeared in court, and distinctly on oath charged Mr. Wyatt with the murder of her husband; and from my not being satisfied with the thanadar's proceedings, I deputed the nazir, upon whom I placed reliance, to proceed to the spot and examine every one on or near the place on that day, particularly on the following points: viz. the spot where Faqueerah was working, and from what particular place Mr. Wyatt had discharged the gun, and whether any sheep had been seen grazing near the place; whether the place where Faqueerah had been shot was visible from where Mr. Wyatt fired, and the distance, and what other labourers where there at the time, and by whose orders the said Faqueerah was cutting grass, and what precautions were used by Mr. Wyatt before firing to prevent accident; and, in short, whatever evidence could be obtained, which would throw light on the true facts of the case.

5. The nazir reported that from the place where the deceased was cutting grass as far as the bungalow it was clear and open, and from where Mr. Wyatt discharged the gun to the place pointed out by the brother of the deceased from which Mr. Wyatt fired the distance was 90 yards, and the distance from the place Mr. Wyatt pointed out was 207 yards, and that there were no sheep there, but were grazing in the mangoe tope; upon which the depositions of the heirs of the deceased, together with those who were on or near the place or otherwise acquainted with the circumstances of the case, amounting in all to 23 persons, were taken down by me in the presence of the accused, from which it will be observed that on the part of the prosecution there were no eye-witnesses to the fact of the firing; nor does it appear in evidence that Mr. Wyatt shot the deceased through malice, although it is at the same time singular that none of the witnesses, except those for the defence, should have seen any sheep grazing at the place where the deceased was shot at the time, nor have heard two reports of the gun: and in absence of direct proof on the part of the prosecution, the witnesses for the defence deposed to the deceased having been accidentally shot by the accused while in the act of firing at a sheep, and that the deceased was not visible from where the accused fired.

6. I am, however, of opinion that it was highly improper in Mr. Wyatt firing with ball in a place . . . from its nature it was to be expected that many people were at work, and that had proper precautions been taken this occurrence would not have happened. *Sic orig.*

7. Under these circumstances I deem it expedient, first, to solicit the orders of the Honourable the Deputy-governor, with a view of being informed whether, in the opinion of the Governor, there are sufficient grounds for me to refer the case to the Supreme Court, and whether of a nature which would warrant the prosecution to be conducted by the law officers of Government.

8. I beg further to state, for the Deputy-governor's information, that according to the provisions of Regulation XV. of 1806, the prosecutors have been informed of the course that they must ultimately pursue of obtaining redress; and that with reference to the poverty of the heirs of the deceased, I respectfully beg to suggest that any expenses which they may necessarily incur should be defrayed by Government.

9. In conclusion I beg to state that merely translations of the depositions of the heirs of the deceased and the witnesses, together with those for the defence, which were taken by me, are submitted; but in the event of his Honor's deeming it advisable for me to refer the case to the Supreme Court, translations of the whole shall be transmitted hereafter.

I have, &c.

(signed) *W. T. Trotter*,
Magistrate and Justice of the Peace.

Tirhoot, Office of the
Magistrate and Justice of the Peace,
25 January 1839.

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Luchooman Thakoor, Witness to the Inquest, Examined. Brahmin; aged 45.
15th November 1838.

Q. Did you see the corpse of Faqueera?—*A.* On being summoned by the thannadar of Reegah . . .* showed me the corpse at the factory of Hanooman Nuggur. I saw the mark of a bullet wound, which penetrated through left arm, entered the left side; I saw no other wound.

Who shot Faqueera?—I neither saw nor did I hear who shot him.

Whose servant was Faqueera?—I do not know, but am aware that he was a labourer, and his house is eight coss distant from mine.

Did you see the bullet?—I merely saw the wound.

*Sic orig.

Hurtumjee, Witness to the Inquest, Examined. Of the Gowalla Caste; age from 50 to 55.
13th November 1838.

Did you see the corpse of Faqueera?—On a burkundauze having taken me to the factory of Hunooman Nuggur, the thannadar of Reegah showed me Faqueera's corpse. I saw the said corpse; a bullet had struck Faqueera on the left arm; the bullet had gone through and through, had sunk in the left side, from which there were three wounds; I saw no other besides these.

Who shot Faqueera?—I neither saw nor heard; my house is distant half a coss from Faqueera's house, from which circumstance I did not hear the name of the person who shot him.

15th November 1838.

Did you see the bullet?—I only saw the bullet wound.

Did you observe how there were three wounds?—The bullet, from penetrating through the arm and entering the side, caused three wounds.

Was this the cause of death?—It was.

Doorgah Dut, Witness to the Inquest, Examined. Of the Gowalla Caste; 60 years of age.
13th November 1838.

Q. Did you see the corpse of Faqueera?—The jemadar of Reegah showed me the corpse of Faqueera at the factory of Hunooman Nugger. I saw that a bullet had gone through and through the left arm, had entered the side below the armpit; from this there were three wounds, from these wounds he died. I saw no other wounds.

Who shot Faqueera?—I do not . . . nor am I acquainted with the cause of his having been shot.

Sic orig.

Mossummat Joomnee, Prosecutrix, Wife of Faqueera, deceased; Examined.
17th November 1838.

What have you to state in this case?—The Sahib loaded his gun, fired, and shot my husband Faqueera.

How did this occur?—He was cutting seven beegahs of land belonging to the Sahib, for which he pays from 13 to 14 rupees rent; the moonshee of the factory called him for the purpose of cutting grass. From this enmity: "Why are you cutting the grass?" the Sahib on seeing him shot him.

How did he see him?—He saw from the bungalow that he was cutting grass; on this he shot him.

How do you know that the Sahib saw him and fired?—After having given my husband his dinner, I was returning, when a cry arose that he was killed. I did not see the occurrence myself.

Do you know if the Sahib fired at a sheep?—He did not; there were no sheep there.

The Sahib says he did; how is it you say this?—What he says about the sheep is false.

Was Faqueera a servant of the factory?—His elder brother, Melurwan, is a factory servant.

Who cultivates the land?—Bustee and Faqueera cultivate the field, *i. e.* the above seven beegahs.

Where do you reside?—In Simree, one coss to the east of the factory.

Why had your husband gone to cut grass?—The moonshee of the factory told him to cut grass.

Who says that the Sahib saw your husband and shot him?—Melurwan says so, no one else; Melurwan said that having seen him from the bungalow, the Sahib fired and dismissed the other labourers.

What other labourers did he dismiss?—I do not know their names.

When did Faqueera go to the factory?—At morning time.

Did your husband before this time ever come to the factory?—Several times; he used to come and go to the factory, and work there.

26th November 1838.

Re-examined.

What is your complaint?—My husband, while rooting up grass, was shot by the Sahib.

You were formerly asked what you had to state: you stated that your husband, by name

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Faqueera, was shot by the Sahib, and he died; and the Sahib bore an enmity on account of rent, and pays 18 or 20 rupees rent, and cultivates seven beegahs of land, and the factory moonshee called him to cut grass, then he went to cut grass; the Sahib then saw my husband, and shot him: how did he see him?—The Sahib saw him cutting grass from the bungalow; then he loaded his gun and shot him.

How do you know that the Sahib saw him?—I had given my husband his dinner and was returning, when the cry arose that he had been killed, but I did not with my own eyes see the occurrence.

Did the Sahib fire at a sheep?—There were no sheep there, so he did not fire at a sheep.

The Sahib says he did; how is this?—There were no sheep; it is false.

Was Faqueera a factory servant?—Melurbaun his brother was.

Who cultivates the fields?—The three brothers do; viz. Bustee, Faqueera, and Beharee.

Why had your husband gone to cut grass?—At the moonshee's request he went.

Who told you that the Sahib saw your husband with his own eyes, and shot him?—Melurbaun said so, and he dismissed the other labourers.

What labourers did he dismiss?—I do not know their names.

When did Faqueera go to the factory?—Early in the morning of that day; and he used to come and go and work frequently.

Did your husband ever before come and go to and from the factory?—Frequently; and sometimes he used to plough.

Have you any witness of all this?—What witnesses have I; I have none.

Do you accuse the Sahib of murder?—I do.

What labourers were working with him, can you point them out?—They were dismissed and went away; they are factory servants.

Have you any witnesses in support of your accusation?—Melurbaun.

At what o'clock was your husband shot?—About three o'clock in the afternoon.

Examined by Defendant.

The labourers were dismissed at 12 o'clock for one hour; why did they go away?—They all went to the bazar and did not return.

How do you know this?—It is reported so by all the people.

By all of whom?—A servant of the factory, whose name I do not know, said so.

Why did he say so; is he a friend of yours?—I was weeping and beating my head; on this he told me.

Can you bring forward that servant?—I do not know him.

Have you witnesses to anything you have said?—I have none.

Do you accuse the Sahib of murder?—I do.

Why did you not do so at the thannah?—They would not hear what I had to depose at the thannah.

Are you able to point out what factory labourers there were?—They were all at the factory; Melurbaun, brother of Faqueera, knows them.

Have you any witnesses?—Melurbaun.

28th November 1838.

Are the depositions now read to you as being yours, given at the thannah, the true ones?—I said at the thannah that the Sahib had shot my husband.

How does it happen that you say he fired at your husband, when you did not say so at the thannah?—

Malurbaun, Brother to deceased, Examined. 26th November 1838.

What is your evidence in this case?—I am a servant at the factory. Ramnath, the moonshee of the factory, ordered me to get some grass cut. I returned home and asked my brother to do so, who said he would do so; then I said to him, "Come to the factory early in the morning." Faqueera called at the factory; Moonshee Ramnath, with myself and five or seven others, were near the godowa, to which place my brother Faqueera came and said to me, "What shall I do?" I replied, "Why do you ask me? ask Moonshee Ramnath;" then Moonshee Ramnath ordered him to cut grass, which Faqueera went away to do; the place to which Faqueera went was about eight or nine beegahs distant from the factory.

Did any other person accompany your brother?—I observed no one else.

At what time did he go?—Saturday, about one hour after sunrise, to cut the grass.

What took place after this?—At a little after 12 o'clock my brother cried out, "Come and eat dinner." Joomnee, his wife, brought him his dinner; then I went there beneath the shade of a gooller tree. Faqueera and I eat our dinner; whilst we were eating she sat apart. After we had finished dinner, Joomnee returned home, at which time I observed the Sahib sitting at the bungalow. After this Faqueera went to cut grass, and I went to the godown; after this I saw the Sahib come from the bungalow, and entering the field, shot Faqueera.

At what time was this?—After 12 o'clock.

When the Sahib fired, were there any sheep there?—There were neither sheep nor goats.

Where was Faqueera when the Sahib fired?—He had gone to cut grass.

Did you see all this take place?—I saw it with my own eyes.

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How far was the gooller tree under which you had eaten your dinner from this?—The place where my brother was killed was about five cuttahs distant from the gooller tree, to the west and north.

Did you see where your brother fell?—I saw he had fallen near to the grass, in cutting the grass on the north side, about a yard and a half.

Did you then go near Faqueera?—I went and saw he was killed.

Did you go immediately, or after a little delay?—I went immediately.

What length of time elapsed between Faqueera's going to cut grass and the report of the gun?—I had gone five cuttahs when the report took place.

Did you see the gun fired, or merely hear the report?—I heard the report.

Did you see the gun in the Sahib's hands?—I did.

From where did he fire the gun?—I saw this much: the Sahib came from the bungalow, entered into the field, and having seen him with his own eyes, fired and shot him.

Did you see the Sahib come from the bungalow?—I did; but did not know he would kill my brother, or I should have taken him away.

You stated above you heard the report; now you state you saw the Sahib coming from the bungalow; what is the meaning of this?—I observed, from the place where we two brothers were sitting, the Sahib come out from the bungalow, and when Faqueera was to the east and I to the west, he fired; I know well that the Sahib fired at Faqueera.

Was any one else in the Sahib's company?—Mr. Brodie was.

Did the Sahib come from the bungalow, or by another road?—He did not come in another direction; he came from the bungalow.

On what side from the bungalow is the place from which the Sahib fired?—To the south and east of the bungalow.

On which side is the place where your brother was killed from that where the Sahib fired?—Directly south.

Were there any sheep near the Sahib?—None.

What sort of ground is there?—It is choumase, *i. e.* perfectly level.

How many gun reports did you hear on that day?—I heard one report, that which was the cause of my brother's death.

Do you know if the Sahib fired at a dog?—I did not know.

Did you observe a dog near the bungalow on that day?—I did not.

Had any other labourers gone to cut grass?—Faqueera called me at 12 o'clock; I do not know if any one had gone with him or not.

Where was your brother when the two Sahibs were coming?—The corpse was lying in the field, not in the ditch.

On which side had he been cutting grass?—He was cutting grass on the south side, where the field was clear and open, near the ditch.

How high was the grass?—As high as a man's waist or breast.

Did the Sahib go immediately to see?—He did, and the gun was in his hand, and he came several times afterwards until evening.

When the noise arose, did the Sahib go immediately to see the corpse, or did he come from the bungalow?—After he had fired the gun he returned to the bungalow; then he called the moonshee, and the three Sahibs, Messrs. Brodie, Wyatt, and another whose name I do not know, and moonshee, and servant, &c. went to see the corpse.

Where was the corpse at this time?—Where it was at first.

What occurred after this?—I was weeping; the moonshee made me quiet, and the Sahib sent for the darogah, who caused the circumstances of the case to be written, and the corpse remained there all night.

What were you doing at the factory godown?—I was making ropes, and was outside of the godown.

On which side of the road were you sitting?—How do I know? At that time I had gone to dine with my brother.

Did Faqueera formerly work at the factory?—He used to cultivate the land.

How much land?—Seven beegahs.

Did he cultivate in partnership with any one, or did he work alone?—I and Faqueerah cultivate together, and Bustee and Beharee separately; the fields belong to the three, and I am a servant of the factory.

Do you know this gun?—I do; it was the gun he fired with; I know it from the colour.

When these three Sahibs came from the bungalow, was the gun with them?—Not then.

Do you ascuse the Sahib of murder?—I do.

Was there any one elso who saw this?—There was no one else.

The Sahib in his answer states he fired from a toree field, 207 yards distant; how comes it you say contrary to this?—The Sahib may say what he pleases.

Have you any more proof?—None.

Can you name those who saw the Sahib fire his gun?—How can I name the servants and domestics of the Sahib?

Why cannot you?—They are servants of the Sahibs, and no one will speak on my side.

Have you anything further to state?—Nothing.

Was there any enmity between the Sahib and your brother?—The putwarree had sent the posban to him for rent due; the posban struck Faqueera twice; this took place long ago; the posban must have told the Sahib so.

How many months ago?—Not more than one month, and he was frequently asking for the rent.

Examined by Defendant.

In what village did the three persons above mentioned cultivate land?—In Bhugwanpore.

Who is the surdar of the three brothers?—Faqueera was.

In whose name is the field?—In Bustee's name, and Faqueera used to work in it.

If the field was in Bustee's name, and Faqueera used to work in it, then why did I not ask Bustee for the rent, and shoot him?—Bustee was not in the village.

When did he come?—After the death of Faqueera occurred.

Examined by the Court.

Where was Bustee when Faqueera was killed?—He had gone to the Bisrampore.

Did Bustee use to work at the factory?—Never.

Why was this?—Because he used to work at home.

Examined by Defendant.

How far is Bustee's house from the factory?—Less than a coss by one quarter.

You say that he used to cultivate the lands with the others while you were a servant of the factory; how was there no enmity against you?—I was a servant of the factory; the putwarree used to press him for the rent; for this reason there was oppression against him.

Are your depositions which were taken down at the thannah, and now read to you, correct?—Yes, they are, with the exception of the words, "bap," "bap," which are not mine; and I also deposed to my brother having been shot by the Sahib with a bullet; and, moreover, I did not say at the thannah that I was at the godown at the time of the occurrence. The darogah has put that down of his own accord.

Sheif Seif, Witness, a Servant of the Factory, aged 20 years, Examined. 26th November 1838.

WHAT do you know regarding this case?—I did not see personally, as I was making ropes at the godown, when at three o'clock p.m. I heard the report of a gun. I went at that time to the village of Bundhee. On returning, the people were saying that the Sahib fired and missed a sheep, and struck the brother of Mehurbaun, who was cutting grass, and he died.

Do you know anything further?—Nothing more.

What sort of a place was it where Faqueerah was killed?—In the evening, where Faqueerah's brothers were weeping, I observed that the corpse was on the top of the ditch.

How was it known that the corpse had been taken from the ditch?—It was known from the marks.

What sort of a place was it where the corpse was?—It had been placed on the open ground.

Was there any grass in the place from which the corpse had been brought, and how much?—There was long grass.

Were you formerly acquainted with Faqueerah?—I was not.

Did you ever see him before this at the factory?—Never.

Do you know anything further in this case?—Nothing more.

Are the depositions now read to you the same as those taken down by the nazir?—Yes, they are.

The plaintiff asks, when the noise occurred, whether you went to the spot or not?—I went in the evening.

Did you eat your dinner in company with Faqueerah?—I did not.

Doomur, Witness, Examined on oath. 26th November 1838.

WHAT do you know concerning this case?—I saw nothing; but I heard that the Sahib fired his gun, and the ball hit Faqueerah, Meherbaun's brother, who was cutting grass, and he in consequence died.

How did the Sahib fire?—It is reported that the Sahib fired at a sheep and missed, and it struck Faqueerah, who died.

How did you hear this?—Every one belonging to the place said so.

Where were you on that day?—I was upon the bridge.

How far from that place were you?—Twelve or 16 beegahs distant.

What were you doing upon the bridge?—The bridge was in disrepair, and I was mending it.

Did you hear the report of a gun?—I did not hear any.

Did you see the corpse?—I did not go to that place.

After this the depositions of the above witness, which had been taken in the presence of the nazir, having been read to him, he was asked "if it was all true," and he replied that it was.

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Karee, Witness, Examined. Of the Doosadh Caste; aged 30 years.
26th November 1838.

WHAT do you know regarding this case?—I saw nothing with my own eyes.

What do you know, or what have you heard?—I was in the godown when Meherbaun was weeping. I asked of him, "Why are you weeping?" He answered that "the Sahib had fired his gun, and hit my brother, who has died:" this I know.

Do you know anything more?—Meherbaun's brother was cutting grass when the ball struck him, and he died.

Did you hear the report of the gun?—I did.

How many reports did you hear?—Heard one.

Before this did you hear any report?—I heard one report; I know nothing of any previous one.

Did you then go and see Meherbaun's brother?—I did not go, nor did I see him.

What were you doing in the godown?—I was weighing out tow.

Were there any sheep there?—I saw no sheep there; I did not go out.

Were you acquainted with Faqueera?—I was not.

Had Faqueera any dispute with the Sahib?—I do not know.

Where did Faqueera reside?—In Simree, about one coss distant from the factory.

Did you ever formerly see Faqueera come to the factory?—I did not.

What description of ground was it where Faqueera was killed?—There is grass and a bank, and to the north of the bank it is open (or clear); there is no pasture there.

Do you know if the Sahib fired at a dog?—I do not know.

After this the above witness, having heard his deposition which had been taken in presence of the nazir, was asked if it "were true;" he replied that "it was."

Moradum, Witness, Examined. Sheikh Caste; age unknown, about 30 years.
26th November 1838.

HAVE you any connexion with the factory?—I am a servant of the factory, and I am employed as a grass-cutter.

What do you know of this case?—I was working in the stable when there was a cry of "syce," and the Sahib said to the syce that "we were shooting at a sheep, but missed it; the bullet has struck a man, who cried out 'bap,' 'bap;'" and this occurred a little after two o'clock, and the syce told me of this, and said, "Go, and look about." We then went into the sugar-cane field, and commenced searching, and Meherbaun, the brother of Faqueera, who had been searching from the first, having seen . . ., began to weep.

What did you all see?—We saw that Faqueera had fallen dead.

Where did you see that he had fallen?—In the ditch.

Who took him out of the ditch?—I went away from the place then.

Who all went to see him?—I and Person Syce, and Busgeet, and Gholamally, went to search for him.

After this what happened?—We went away to our work, and the corpse remained there.

Did you give information to the Sahib of this?—We did.

Who gave the information to him?—The Sahib was standing in front of the bungalow, when Meherbaun, the brother of Faqueera, began to weep; at that time the Sahib observed him.

Did you see any blood in that place?—From the mouth and the nose, and where the wound of deceased was, blood was flowing.

How far distant was the bungalow from the corpse?—I do not know.

Did you know Faqueera?—I did not know him.

Was there any grass there?—There was grass of a man's height.

If any one had gone to cut grass there, could he have been seen?—It was jungle; no one could have been seen from the outside.

How many gun-reports did you hear?—After two o'clock I heard the sound of a gun.

How many reports did you hear?—I heard one report.

Did you see any sheep there?—I saw none; but when I came out from the stable I saw two sheep grazing in a garden.

Were there any sheep in the field?—I saw none in the field.

In which direction is this garden?—It is to the east of the stable.

Of what colour were those sheep?—One was white and the other black; there was also a young one of black colour; three sheep in all.

How large was the young one?—It was a very young one.

In the place where Faqueera was killed was there any pasture?—There were crops there and thick grass.

Do you recognize this gun?—I do not.

Were there any labourers in the place where Faqueera was cutting grass?—When we went there we saw only the corpse of Faqueera.

Was there any enmity between the Sahib and Faqueera?—There was none.

After this the above witness acknowledged as true the deposition taken in presence of the nazir.

Golamally, Witness, Examined. Mussulman; age about 25 years. 26th November 1838.

WHAT do you know in this case?—I know nothing.

How was Faqueera killed?—I did not see personally anything.

What did you hear?—I heard that the bullet hit him.

How did this happen; mention the circumstances?—I was not on the spot; I went in company with the bearers to search for the corpse; I saw that the bullet had hit Faqueera, and that he was lying dead.

Where was it you saw he had fallen?—In a sugar-cane field, where there was some grass in a ditch; I saw he had fallen.

After this, what occurred?—I went away to my own work in the stable, and do not know what happened after this.

Did you hear the report of a gun?—I did.

Had the Sahib fired at a dog?—I know nothing of this; he fired at a sheep.

Where was the sheep?—The sheep was in a garden.

How long after hearing the report did you go?—After a considerable time.

What kind of a field was it; was there jungle?—There was not, but there was thick pasture in that place.

Were you formerly acquainted with Faqueera?—I was not.

Did you see Faqueera early in the morning of that day?—I did not see him.

Did you observe any blood in the ditch?—I observed blood upon the body, but none upon the ground.

Is the deposition taken in presence of the nazir, which you have just heard, true?—It is true.

Bustee, Witness, Examined. Hindoo; age about 40 years. 26th November 1838.

Do you know anything of the circumstance of the case?—I was sick and in my own house then.

Did you hear how it happened that Faqueera died?—I heard that the Sahib, while shooting, had killed Faqueera.

Did you hear the report of a gun?—I did not, my house is far distant.

Did you see the corpse?—I saw it next morning; it was on the top of the ditch.

Do you know anything more?—I do not; I saw the corpse eight hauts distant from the ditch.

How was it you went there to see it?—A burkundauze took me.

Do you know the circumstances of Faqueera?—I know that he lived at Simree, and he has a brother residing at the factory; I do not work at the factory.

The above witness was then asked if his former deposition, taken in the presence of the nazir, was "true," and replied that it was.

Examined by Prosecutor.

Did Chokedar beat my brother, and did you set him free?—In the month of Assar a chokedar brought Faqueera to the cutcherry of the factory, by the putwarree's orders; then he said his name was Bustee, on which he was set free.

Examined by the Court.

Did you observe any blood where the corpse was?—I did.

Examined by Defendant.

Did you observe blood outside of the ditch, or inside?—I saw no blood in the ditch.

Did you hear if Faqueera had been killed while out of sight, or if the field was open?—He was concealed by the grass.

Ramnauth Moonshee, Witness, Examined. Hindoo; age about 25 years. 26th November 1838.

WHAT do you know in this case?—On Saturday, early in the morning, Meherbaun came and brought with him Faqueera, his brother; he answered, "I have brought him to cut grass." Then I said, "Go and cut grass according to custom, and give two bundles to the factory and keep one bundle for your trouble." Accordingly Faqueera went to cut the grass. After this, about three o'clock, Purshum, bearer, came and asked of him, "Where have you come from?" Then he said, "The Sahib has summoned me." I then inquired wherefore; and he said, Messrs. Brodie and Wyatt, while shooting, made a wager and fired a bullet at a sheep; did not strike the sheep, but hit a man who was cutting grass; after which information was given at the thannah.

Where did Purshum, bearer, come from?—He came from the bungalow: I was at the godown.

Did you then go?—I went to the Sahib at the bungalow.

What happened there?—Information was given at the thannah.

Did you go to see the corpse?—On coming from the bungalow, I went to see it.

In whose company did you go?—Purshum, bearer, and I went together; Meherbaun was with the corpse.

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Where did you see the corpse?—It had been placed outside of the ditch.

Where had the corpse been placed?—It was in the open field.

Who took the corpse out of the ditch?—I heard that Messrs. Brodie and Collingridge had done so.

Did you observe any blood there?—In the ditch I saw some, but none outside of it.

Could a man have been visible there?—On account of the grass he could not have been seen, but from the bungalow to the grass the ground was clear; but on account of the grass a person could not have been seen.

Were there any sheep there?—I saw sheep near to the trees.

How many did you see?—I saw two sheep and a lamb; one was black and the other white.

Were there three sheep?—Two sheep and a lamb.

When did you observe the sheep under the trees?—After three o'clock I observed them, and to the north of the place where the corpse was there was good pasture.

Did you hear the report of a gun?—I did.

At what time was this?—About three o'clock.

How many reports did you hear?—I heard two on that day.

When did you hear the first?—About half-past 12 o'clock.

And when did you hear the second?—About 3¾ hours after "do Puhur."

From which was the death of the man caused?—I heard of the above occurrence after the second report.

At what was the first fired?—I did not see.

How far is the godown from the place where Faqueera was killed?—More than 12 beegahs distant.

Had Faqueera any connexion with the factory?—None; his brother Meherbaun is a servant of it.

Was Faqueera in the habit of coming and going from the factory?—He never used to come.

Does Meherbaun cultivate any land?—His brother Bustee does.

Does he do so alone or with others?—He has partners in the cultivation.

If this was the case, why was it Faqueera never used to come to the factory?—There is a considerable distance between the factory and the land; from this he never used to come.

Was there any enmity against Faqueera?—There was none.

Do you know if the putwarree had caused Faqueera to be beaten by the posban?—I do not know this.

Is all your evidence given in the nazir's report the true one?—It is.

You formerly stated you had heard one report and now you state you heard two; how is this?—I do not know; the nazir never asked me how many I heard. (After this he said all the rest was true.)

How is it you have stated you heard two reports?—I asked the Sahib, and he said two reports; I did not see.

Do you know anything further?—Nothing.

Do you know this gun?—I did not see it until afterwards, at the bungalow.

Radhey, Witness, Examined. Of the Hindoo Caste; aged about 50 years.

27th November 1838.

What is your name?—My name is Radhey.

What do you know concerning the manner in which Faqueera was killed?—I know nothing.

Have you heard anything?—I was at the bazar on that day; I heard from the people coming and going, who were remarking that the Sahib while shooting shot Faqueera, who died.

Did you hear how this happened, and what he had fired at?—I heard merely that the Sahib while shooting had killed Faqueera.

Are you aware if the Sahib fired at a sheep or not?—I did not hear this; I merely heard he had been shooting.

How comes it that the other witnesses affirm they heard he fired at a sheep, and you did not hear this circumstance?—I merely heard the mention of game.

Did you see the place where Faqueera was killed?—When the nazir went I saw it; there was grass to the south and to the north of the grass open.

What sort of grass?—The grass was very large and thick.

Could any one cutting grass in the inside have been seen from the outside?—I could not say.

Did you see any blood there?—I saw none; the ground was moist.

Where did you see the ground moist?—To the north of the grass, where it was open.

Is there any pasture there?—There is thick grass there.

How many sheep has the Sahib?—I do not know.

Had Faqueera any connexion with that factory?—None. Faqueera had four brothers; Bustee, Behary, Meherwan, and Faqueera. Meherwan alone is a factory servant; the others cultivate the ground.

How much land?—I do not know exactly; they all cultivate it together.

Did

Did you ever see Faqueera at the factory before this?—I never did.
Did you hear the report of a gun on that day?—No, I did not.
You said formerly, in presence of the nazir, in your evidence, that "on Saturday I heard the Sahib had shot Faqueera, who died;" and you tell a different story here; what is the cause of this?—What I have mentioned here, I also deposed to before the nazir.
If you did not mention this then, how does it happen to have been written?—How do I know? God knows.

Examined by Defendant.

How far distant is your house where all this took place?—About half of a mile.
Had you and Faqueera any connexion with one another?—None.
Who is the mooktear of these four brothers, and in whose name is the land, and who pays the malgoozary?—Bustee, the brother of Faqueera.

Bhurrosy Pasbane, Witness, Examined. Of the Hindoo Caste; aged 35 years. 27th November 1838.

Do you know the circumstances of Faqueera's death?—I was not present on that day; I was in the village of Bukhree, which is a coss and a half from there.
Do you know anything about the case?—I returned about seven at night.
Did you hear anything?—Meherwan, the brother of Faqueera, came weeping, and I asked of him the reason; he told me his brother had been killed.
Did he say anything more?—Besides this I asked nothing, and he said nothing.
Do you know the circumstances of Faqueera, what they are?—I do not, I had no acquaintance with him; he never used to come near the factory.
Did you see the place where Faqueera was killed?—I did not go there that day.
Do you know in what place it occurred?—I returned at seven at night, and so do not know.
How many sheep has the Sahib?—One black, one white, and a lamb.
Do you know anything more?—I heard that the Sahib had gone to shoot, that he fired at a sheep but missed, and struck Faqueera, who died.
From whom did you hear this?—From all the people around, and the darogah also.
Did you hear that there was any dispute between Faqueera and the Sahib?—I do not know.
After this the above witness acknowledged the truth of his evidence, as taken by the nazir.

Jungree, Witness, Examined. Hindoo; age about 30 years. 27th November 1838.

What do you know in this case?—I was in the district with the jemadar, measuring; when I returned in the evening I heard that the Sahib had hit Faqueera, in place of a sheep he fired at. I heard this from Meherwaun.
Do you know anything further?—No.
Did you see the corpse of Faqueera?—I did not.
At whose sheep did the Sahib fire?—The sheep were the Sahib's own.
Why did he fire at his own sheep?—I cannot say.
Did you hear he had made a bet about it?—I heard he had gone to shoot.
Do you know the place where Faqueera was killed?—I know that is jungle, and the jungle is a grass one, and the grass is of a man's height.
Do you know if any grass was cut?—I have not been there; I do not know.
What work was Faqueera doing at the factory?—He does no work; his brother Meherwan is a factory servant, I know him.
Had the Sahib any dispute with him?—I do not know.
How many sheep has the Sahib?—He has two large sheep and a lamb; one of the sheep and the lamb are black, the other sheep is white.
Where were the sheep grazing?—I did not see this; there was no shepherd there.
Was the ground in front of the bungalow, where Faqueera was killed, open?—It was open from the bungalow as far as the jungle.
The above witness acknowledged the truth of his former evidence, contained in the nazir's report.

Jhummun Roy, Witness, Examined. Of the Brahmin Caste; age about 25 or 26 years. 27th November 1838.

What do you know concerning Faqueera's death?—On the day on which he was killed I knew nothing; he was killed on Saturday. I heard on Sunday that the Sahib had fired his gun, the ball of which struck Faqueera.
From whom did you hear this?—It was the current report among the people.
Did you go to see the corpse on that place?—When the nazir went, I also accompanied him to that place.
What sort of a place was that?—From the bungalow to the place where the blood was, the ground was open; above the ditch there is grass, a little of which had been cut.
Where did you see the blood?—I saw the blood on the ditch, and a little in the field.
Was there much grass there?—It was not of great breadth, but high.

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How broad?—Five or six haths in breadth.

Do you know anything about Faqueera?—I did not know him.

Did you hear that the Sahib had fired at a sheep or at any other animal?—I did not hear on Sunday he had fired at a sheep, but afterwards it was reported he had.

The above witness acknowledged the truth of his evidence, contained in the nazir's report.

Horill, Witness, Examined. A servant of the factory; Caste Hindoo; age about 17 years.

Do you know the circumstances of Faqueera's death?—I did not see, but I heard about it.

What did you hear?—I had gone with two other men, at sunrise, to harrow the field; at evening time we left off harrowing, and gave the oxen "ponts" to one of the men, who went away home, and I, taking the oxen towards the factory, was going to feed them. At this time Meharwan came crying out, "Brother, brother." I asked of him, "What is the matter?" he replied that the Sahib had fired his gun at a sheep, and missed, but hit Faqueera.

If Meharwan said this, then what is his complaint against the Sahib?—What do I know? I have repeated what he said to me.

What happened after this?—I returned to my own house.

How far is your house from there?—About half a mile.

In what place was Faqueera killed?—I went with the nazir, and saw that there was a fence on the south side, to the north of which is a ditch, half a coss to the south of which is a grass field, near to which is an indigo field; this field is clean or open.

Was there much grass?—There was, equal to the man's height, and three or four hauts of it was cut.

Could a person inside of that patch of grass have been visible from the outside?—He could not; there was on the bank of the ditch, of which two or three feet had been cut.

Did you see any sheep there?—I did not.

Do you know Faqueera?—I have never seen him; he never used to be at the factory.

After this witness acknowledged the truth of his evidence, contained in the nazir's report.

Questioned by Plaintiff.

This person was to the east of the place where my brother was killed, harrowing, and when the nazir went he asked of me, "Who was he?" I answered "that was Horill," and Horill ran away at that time; why did you run away?—When the nazir went I was harrowing, and did not run away.

When did you come?—In the morning.

Seetun, Witness, Examined. A Servant of the Factory. 27th November 1838.

Do you know the circumstances of Faqueera's death?—I do not know.

Where were you on that day?—I was at the godown, making the materials for twisting ropes; I heard the report of a gun.

What did you see?—I saw nothing, nor do I know from whence the report came.

Was Meherwan there at the godown?—At first he was, but I do not know where he afterwards went.

Did you hear anything?—An hour afterwards Meherwan came weeping, and I said to him, "What is the matter?" he told me that the Sahib had fired his gun at a sheep, missed it, but "hit my brother, who is dead."

If Meherwan said so, why does he not say so now?—Meherwan knows, and God knows.

What occurred after this?—I saw after this that the sheep were grazing near the garden; there were three sheep, one black, one white, and the lamb was black also.

Did you see the place where Faqueera was killed?—I saw it in the morning.

What sort of ground was there?—There is dense grass and a ditch. Faqueera had been cutting grass. To the north of this there is an open field; in this Faqueera was, and there was a quantity of grass collected.

Where had he been cutting grass?—To the north of the ditch.

Did you see any blood there?—I saw blood in the field in which the corpse was; none in the ditch.

Was there any necessity of Faqueera's going into the ditch to cut grass?—There was grass in the ditch, why should he not go?

Did you hear why the Sahib had fired at his own sheep?—I did not hear.

Did the Sahib on that day fire at a dog?—I do not know.

How many gun reports did you hear on that day?—I only heard one.

Had you any acquaintance with Faqueera?—I had not, and he never used to be at the factory.

Why had he come on that day?—The mooktear well knew.

Have you heard if there was enmity between the Sahib and Faqueera, and if the Sahib had forbid him to cut grass?—I do not know about this.

The witness acknowledged the truth of his evidence, contained in the nazir's report.

Questioned by Defendant.

Did you hear whether the Sahib had been shooting on that day, or fired in the first place at the sheep from the bungalow?—I heard he had gone to shoot.

Was

Was he alone on that day?—There were three Sahibs, whose names I do not know.
What is the height of that grass?—As high as a man.
Could any one from the outside see another person inside?—He could not.

Jankee, Witness, Examined. Age about 40 years. 27th November 1838.

Do you know anything about the circumstances of the case?—On the day of the occurrence I had gone to the market of Pursrampore; two hours before sunset I heard that a man at the factory was dead; then I ran to the factory and went near to the corpse. Moonshee Ramnath was sitting near the indigo vats; I went near him, and heard the Sahib had fired and missed a sheep, but hit Faqueera, who is dead.

After this what happened?—As I was at Busrampore, I cannot say.

At what time did you hear this?—On Saturday, two hours before sunset, as I was returning from the bazar, and I heard that the bullet had struck Faqueera, who had been cutting grass, and that he in consequence died.

Why did the Sahib fire?—I do not know this.

Did you hear he had fired at a sheep?—I heard he had.

Did you hear why he did so?—I did not hear this.

Did you observe what sort of place it was where Faqueera was killed?—I did not see it.

Did you formerly know Faqueera?—I did.

Did he use to come to the factory?—His brother Meherwan is a factory servant; Faqueera used to come and give him dinner, but he did no work at the factory.

Why had he worked on that day?—I do not know this.

Did you hear the Sahib had gone to shoot?—I heard he had.

What had he gone to shoot?—I do not know.

Is there a ditch near the sugar-cane field?—There is one to the north of it, and there is grass there of a man's height.

Could a person inside be seen by another from the outside of the grass?—He could not.

Could a person cut grass from that ditch without going into it?—There is grass in the ditch; without going in it he could not cut grass.

What sort of ground is there thereabouts?—To the north of the grass the ground is clear and open, and in this there is grass. Faqueera had gone to cut grass, and I heard that in doing so the bullet had hit him.

Has the Sahib any sheep?—He has one black, one white, and a lamb.

Had these sheep any shepherd?—They grazed of themselves. I do not know if they had a shepherd or not.

Did you see blood in that place?—I saw blood both where the corpse was and in the ditch.

Did you see the corpse?—I did.

What sort of wounds were there?—On the left arm the ball had struck, having broken it; it had sunk in the side, and then there was a bullet wound.

Questioned by Defendant.

You are a government chowkeedar; Meherwan, the brother of Faqueera has stated that a doosaud seized Faqueera, brought him; therefore you are asked if this was done by my order?—Faqueera had no connexion with the Sahib; the rents are collected by the Bilsund people; the putwarree ordered him to be seized and brought.

Byjnath, Witness, Examined. Grass-cutter of Mr. Wyatt; age about 30 years. 27th November 1838.

Do you know in what manner Faqueera met his death?—I was at my work in the house, when the Sahib called Seeta Syce, and said to him, "I was firing and hit a man; go and search for him." Then Seeta Syce came and informed Gholamally and myself, and taking Moradun and Busjit with us, we went to search.

Why did you go to search for Faqueera?—The Sahib had fired and missed a sheep, but struck Faqueera, for whom we went to search.

Did the Sahib say who he had hit?—He said he had hit Faqueera.

After this what occurred?—We went to search for him, when we heard Meharban crying out, "Brother, brother;" having heard this we went near, and saw that Faqueera was lying towards the east.

What happened then?—The bullet had struck the left arm; I saw this.

What occurred after this?—I do not know; and having seen all this we returned to our work.

Did the Sahib at this time come?—Messrs. Brodie, Wyatt, and the Sahib of Dine Chapra factory, came.

When the Sahib ordered the syce to go and search, and when you went, what time of the day was it?—It was about three o'clock.

Did you hear the report of a gun?—I did not.

Did you see any sheep there at that time?—I saw none.

Where did you see the sheep on that day?—I saw the sheep near the garden one hour after this.

What sort of a place was it where Faqueera was killed, and is the ground from the bungalow (open or clean)?—The place where Faqueera was killed is to the north of the bungalow, and is clean, and to the south it is not open; there is a bank and a ditch.

What was Faqueera doing?—He had been cutting grass.

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Where had he been cutting grass?—In the ditch.

Was there any necessity for his having gone into the ditch?—He had been cutting grass in the ditch.

Could a person from the outside have seen him?—He could not.

Did you know Faqueera; and had the Sahib any malice against him?—I did not know him; I know nothing concerning the matter.

Do you know if the Sahib had gone formerly to shoot?—I heard he had gone to shoot jackals.

Do you know, or have you heard, that he fired at a dog?—I did not hear this.

Did you hear the report of a gun on that day?—I did not, nor do I know when the Sahib went out to shoot.

Was Meherwan there also?—I saw Meherwan near the corpse, crying out, "Brother, brother;" he did not say anything more.

How many sheep are there?—Two sheep; one white, one black, and a lamb.

Did you hear that the Sahib had fired at his own sheep?—He met with no game; on this he fired at a sheep.

Did you hear he had made a bet, and that there were sheep in the field?—I did not.

Witness acknowledged the truth of his evidence contained in the nazir's report.

Busgit, Witness, Examined. Grass-cutter to Mr. Wyatt; aged 18 years.
27th November 1838.

ARE you a servant of Mr. Wyatt?—I am his grass-cutter.

Do you know the circumstances of Faqueera's death?—I was in the stable; the Sahib having called Seeta Syce, said, "Go and look about the place where the report of the gun was, with two or three others;" then I having assembled two or three others, went and saw he was lying in the ditch, dead.

What two or three men were with you?—Seeta, Gholamally, Moradan, Byjnath, and myself, went there and saw the corpse in the ditch, and the Sahib ordered Seeta to see what people were making on outcry.

Where was the corpse?—In the ditch.

After this what occurred?—After seeing this we went away to the south, where there is a sugar-cane field, and where he was dead in the ditch; to the north of that there were four hauts of grass, and to the north of this the ground is open.

At this moment did you observe if he was dead?—He was dead; having left the corpse we returned to the stable, the Sahib was there also.

Any other gentlemen?—The Sahib of Behar was there. I do not know the other Sahib's name.

At what time did you and others go?—About three o'clock.

Did you hear the report of a gun?—I heard one at that time.

Was the Sahib out shooting?—I do not know.

How far is the stable from the place where Faqueera was killed?—About 15 beegahs.

What sort of ground is there where the corpse was?—I saw it in the ditch.

Did you see wounds on the corpse?—I saw a wound in his left arm.

What had Faqueera been doing?—He had been cutting grass.

In which side of the ditch was Faqueera?—When we saw it one hand was holding the grass and the other holding the hook, as in the act of cutting the grass.

Did you see any sheep in that place or in the field?—I saw sheep in the tope.

Was there any pasture in that place?—There was motha grass in that field.

How many sheep were there, and of what colour?—Two sheep, one black and one white.

Were you formerly acquainted with Faqueera?—I was not; I know, of course, his brother Maherwan.

Do you know anything further?—Nothing.

Questioned by Defendant.

Did you hear that the Sahib had fired at a sheep?—The syce says that the Sahib told him so, and thus struck the man.

Questioned by the Court.

What length of time elapsed between your hearing the gun-report and your going to see the corpse?—About half an hour.

Sittah, Witness, Examined. A Syce of Mr. Wyatt; age about 30 years.
27th November 1838.

How did Faqueera meet with his death, do you know?—The Sahib having called me into the bungalow, said, "I had gone out to shoot, but fell in with no game; a sheep was coming and grazing in the field; I fired at it, but missed; I know that bullet hit a man in the sugar-cane field." Then he ordered me to go and search, taking with me some others; I, Moradun, Goolamallee, Busgit, and Byjnath, went there and saw that Meherbaun was coming from the east; we asked of him, "Have you met what you were searching for;" he said he had not; after this I said, "Return and search in the sugar cane;" he said, "He is not there." Faqueera was cutting grass. I then said, "There is no necessity for going

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going into the sugar cane; search in the grass." Then I went to search in a western direction, and Meherban went to the east; then he began to weep. I and all went near to him, saw him weeping; we said to him, "Why are you weeping; is he dead?" In Faqueera's hand there was a hook for cutting grass. After this we were standing to the north of the fence, and saw that Messrs. Brodie and Wyatt were coming; Mr. Wyatt said, "What is the matter?" I replied, "A man is dead." The Sahib having come, said, "Bring him into an open place outside of the fence, and lay him there." We and Meherban having taken the corpse from the ditch, laid him in the field; then the Sahib having returned to the bungalow, called the moonshee, and wrote a letter to the darogah, and said to me, "Make ready and bring your horse;" then he gave me a letter, and ordered me to give the letter to the darogah of Rugah and summon him.

At what time was this?—About four o'clock.

From where had the Sahib called you?—From the stable.

Did the Sahib say at what he had been shooting?—The Sahib did not at first.

Did you hear the report of a gun?—I heard one report.

Do you know if he fired at a dog?—I heard from the Sahib he had fired at a sheep, but heard no mention about a dog.

Why did Meherbaun say he had not met with Faqueera?—He said only this, that "my brother was cutting grass;" he was searching for him.

How was it known you were searching for Faqueera?—It was known, because Meherban said, "My brother was cutting grass."

If this were known why did he say he could not find him?—He said this, "I am searching, but cannot find him." I said that the Sahib thought he would not be in the sugar cane; then he said, "He was cutting grass; why would he be in the sugar cane?"

Had Meherban heard any cry, or why was he searching?—He formerly knew he had been cutting grass, and went to search for him.

If he formerly knew, then why had he returned?—Meherben knows about this.

What sort of ground is there where Faqueera was killed?—There is grass and a sugar-cane field; to the north of this field he had been killed.

Where had he been cutting grass?—To the north of the sugar cane; he had been cutting up to the fence, when the bullet struck him.

In what place had the bullet struck?—On the left arm.

When the bullet struck on the left arm, on which side had he been cutting grass, that it should strike the left arm?—I cannot say as to this.

What sort of ground is there where the bullet struck?—There is grass in the place where the corpse was, and fence; and four hauts distant a field, and this field is open.

Could a man have been seen from the outside?—He could not have been seen from a distance.

What sort of jungle is there, is it dense or in patches?—It is very thick.

Did you see any blood there?—I saw blood flowing from the mouth into the ditch.

Did you see blood outside the ditch?—When the corpse was raised up and laid, I saw a little blood.

Had Faqueera any connexion with the factory?—None; his brother Meherban is a servant of it, and I was not acquainted with Faqueera.

What was the malice of the Sahib with Faqueera?—I do not know.

Do you know anything further?—Nothing.

Were you in the stable on that day?—I was at the time of this occurrence.

Where were the sheep on that day?—Grazing in the garden.

How many sheep has the Sahib?—Two sheep, one black and one white; there is also a lamb.

When he heard the report of the gun where were the sheep?—I cannot say.

Questioned by Defendant.

How far was the sugar-cane field from the grass?—About four bamboo lengths.

Seeta, Witness, Examined. Mr. Wyatt's Chowkeedar; age about 30 years.
27th November 1838.

What do you know about this case?—I was in my own house when Faqueera was killed.

What did you see?—In the evening I heard that the Sahib had gone to shoot, that he had fired at a sheep, but the ball had hit Faqueera.

From whom did you hear this?—It is reported so by every one.

Can you mention the names of any one who said so?—I do not know who they were.

Did you see the corpse?—I saw the corpse.

Where did you see it?—There is grass, to the north of which I saw the corpse.

How came it to be there?—It was laid there.

How was it raised from there?—I did not see this.

Is the ground there open, or how?—To the north it is open, but to the south there is grass.

Do you know anything about Faqueera?—I never met Faqueera, and he never used to come to my house.

Do you know anything more?—No, nothing.

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How far is your house from the factory?—About as far as the cutcherry is from Surrija Gunge.

Did you hear the report of a gun?—I did not hear any.

What was Faqueera doing when he was killed?—I heard he had been cutting grass.

Do you know anything about there being enmity between Mr. Wyatt and Faqueera?—I do not.

Has the Sahib any sheep?—Two sheep and a lamb, one of the sheep is black and the other white.

Gollam Nubbee, Examined. Khidmutgar of Mr. Wyatt's; age 30 years. 27th November 1838.

WERE you in the house at the time Faqueera was killed?—I was. The sheep are under my charge; at 3 o'clock I saw them, and a quarter of an hour afterwards I was eating dinner, when I heard the report of a gun.

Where were you eating your dinner?—I was cooking my dinner in my house, when I saw Messrs. Wyatt and Brodie and Fushem, bearer, in a field to the north of the bungalow where there was a bargut tree; having crossed the field they were going away.

Was this before or after you heard the report of the gun?—It was before; in a quarter of an hour afterwards I heard the report.

Was the Sahib going to shoot anything?—I do not know this.

Did you observe the sheep when you saw the Sahib, and afterwards hear the reports?—I did not observe the sheep at that time.

Did you see the gun fired?—I heard the report, but did not see it fired.

Do you know at what the Sahib fired?—I do not know.

Did you hear that he had fired at a sheep?—After dinner, as I was going to Ramnath Moonshee to get some money for expenses, on my return I saw a number of people assembled; I asked what was the matter, and ascertained that the Sahib had fired at a sheep, missed it, but hit Faqueera, who was cutting grass.

When was it you heard this?—An hour afterwards.

Where were the people assembled?—In the place where Faqueera was laid.

What sort of a place was it where he was laid?—It was open, but where he was killed there was grass and a ditch.

How do you know he was killled there?—I did not go to see, but the people said so.

Were there any marks by which it was known he had been killed in the ditch?—There were none; the people say that he fell in the ditch, and taking him out he was laid in the field.

Did you see the sheep when you saw the Sahib?—I did not see the sheep at that time; I saw the Sahib coming out of the bungalow, at which time I was in my kitchen.

On which side from the factory kitchen is your kitchen?—It is to the north and the door is towards the east, and there is a garden to the south of the factory kitchen.

Did you see any sheep there?—I saw none; I saw the Sahib at the peepul tree, which is 15 hauts distant from the bungalow; I did not see him afterwards.

Could you see the garden from your kitchen?—It is impossible; I saw the sheep grazing in the garden on my return from the cutcherry.

How far is the garden in which you saw the sheep grazing from the place where Faqueera was killed?—About 150 or 185 yards.

How many gentlemen went?—There were two, Mr. Wyatt and Mr. Brodie; I saw one gun also.

Is this the gun?—I cannot swear as to this being it or not.

What sort of a place is it where Faqueera was killed?—In that place there is grass and a ditch; the place to which he was brought is open.

What sort of grass is there, is it dense or in patches, and could any one be seen by a person from the outside?—The grass is dense, and a person could not be seen from the outside.

Did you observe if any grass had been cut?—I saw very little had been cut to the west of the goaller tree.

Could a person cut the grass of the ditch without going into it?—I saw of grass cut about three hauts, and also some in the ditch cut.

Did you see the corpse?—I saw it out on the plain.

Did you observe any wounds?—I did not.

Was Faqueera in the habit of being about the house?—I did not see him.

Had the Sahib enmity against Faqueera?—I have not heard this.

Bhadie, Witness, Examined. Mr. Wyatt's Cook; age about 18 years. 27th November 1838.

WEAT do you know in this matter?—I was preparing dinner in the kitchen; I heard a report from the east.

What sort of a report?—The report of a gun.

At what had the Sahib fired his gun?—I cannot say, as I was inside of the kitchen.

How was it Faqueera was killed?—I do not know how it was.

Were there any sheep in that place?—Below the goaller tree there was a black sheep and a white one, and a lamb.

Where was Faqueera killed?—In some grass near the sugar-cane field.

How far is the goaller tree, under which you saw the sheep, from the place where Faqueera was killed, and in which direction?—It is a considerable distance.

Where

Where was the Sahib?—He was in the field in which it is clear, and he was going away in the southern direction.

At what time did you hear the report?—About three o'clock.

At this time did you observe the sheep?—On hearing the report I saw the sheep in the field near to the goaller tree.

Did you see the gun fired?—I saw it from the kitchen.

At what did the Sahib fire?—I heard he fired at a sheep.

At whose sheep?—At his own.

Why did he do this?—He himself knows this.

Did you hear anything about his firing for a bet?—I was in the kitchen; I do not know.

Do you know if he had gone to shoot game?—About this I do not know, nor have I heard.

How many gun reports did you hear?—I heard one.

Do you know if the Sahib had gone out before you saw him?—I do not know.

What sort of place is it where Faqueera was killed?—There is a sugar-cane field and there is grass.

How high is this grass?—As high as a man.

How much grass had been cut?—I did not observe this.

Could a person from the outside discern another who had gone into the grass?—He could not.

Did you formerly know Faqueera?—He never used to come to the factory; I was not acquainted with him.

Was there any enmity between Faqueera and the Sahib?—I do not know about this.

Durshem, Witness, Examined. Mr. Wyatt's Khidmutgar; age 20 years.
27th November 1838.

What do you know in this matter?—I had gone to the Berrampore market.

On what day was this?—On Saturday the 10th November; I returned in the evening.

What did you hear on return?—I heard from every one coming and going that the Sahib had fired a bullet at a sheep, but that the bullet had hit Faqueera, who was cutting grass in the jungle.

Did you see the jungle?—I saw it; it was a grass jungle.

How much was there?—It was as long as a man's height.

Did you see Faqueera?—I did not.

Was the place on which Faqueera was killed open?—To the north of the bungalow it is open, but to the south it is jungle.

Did you hear on which side of the jungle he had been killed?—I did not go there, but I heard it was in the jungle he had been killed.

Did you know Faqueera?—I did not.

Do you know anything further?—Nothing.

Were there any sheep grazing there?—I did not observe any.

How many sheep has the Sahib?—Two sheep and a lamb, one is black and one white.

Are they generally tied up or loose?—They generally are loose.

Did you ever hear of there being enmity between Faqueera and Sahib?—I did not hear about this.

(True copies.)

(signed) *W. T. Trotter*,
Magistrate and Justice of the Peace.

Depositions of Mr. *G. N. Wyatt*, residing at Bhugwanpore Factory, Zillah Tirhoot, by profession an Indigo Planter; taken this 15th November 1838.

It appears from the thana inquest proceedings, that you stand accused of having caused the death of one Faqueera, by discharging a fowling piece loaded with ball; will you have the goodness to state the particulars, and what you have to urge in your defence?—At three o'clock on the afternoon of Saturday 20th November, I discharged a fowling piece, loaded with ball, at a dog from the verandah of the bungalow; when I ran after the dog it was hit, but I could not catch it, it having run away; when after pursuing the dog from 600 to 800 yards, I returned in company with Mr. Brodie and bearer by name Purshun, when there were two sheep in a field near the bungalow, in an indigo field, when I said to Mr. Brodie that I would bet him a rupee that I would hit the black one. I fired and missed it, and on the rebound of the ball I heard a man calling out "Bap, bap;" on which I instantly run to see if I had struck any one, not knowing that any one was there. I found no one, and then returned to the bungalow, where Mr. Collingridge was, to whom I related all the particulars, and at the same time told my bearer to order my syces and grass-cutters to go and see if I had struck any one, having heard a man calling when I fired; and having sent these men to satisfy myself regarding the event, Mr. Collingridge, Mr. Brodie, and myself went down towards the field to learn the truth of the case, when I saw his brother Meherban crying, my syce at the same time telling me that Faqueera was dead. We instantly pulled him out of the ditch in the middle of the grass, to ascertain whether he was alive, but found him dead. Afterwards I instantly sent off one of my syces on horseback to the thana to give intelligence, when the thanadar came in the evening, and held inquiry in the morning.

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Will you have the goodness to state whose sheep they were that you were firing at?—The sheep were my own.

Did you use any precautions to prevent accident before firing at the sheep?—I fired in the direction of the sugar-cane on purpose to prevent accident, thinking that the ball would be spent before there could be a possibility of hitting any one.

Will you state where this man Faqueera was cutting grass?—He was to the north of the sugar cane, between me and the sugar cane in the grass.

How high was the grass?—It was as high as myself; the common thatching grass.

There you perceived no one in the grass?—I did not, nor was I aware of it until I heard the noise of his hallooing, and was told afterwards by my syce.

At what distance were you shooting at the sheep?—I was shooting at the sheep at about 150 yards.

How far was the grass, where the man was cutting it, distant?—About 200 yards distant from where I was standing, and about 50 more from where the sheep were.

Who is this Faqueera?—He is a Moosulman residing at a village called Simree, about one coss distant from the factory.

Is he in your service or any way connected with you?—He is not in my service nor in any way connected, nor am I aware that I ever saw him before the day of his death, and that there was no previous altercation or dispute of any kind.

Have you got any witnesses to corroborate the statement you have now made?—Yes, Mr. D. Brodie and my bearer, by name Pershun, who was with me when the accident occurred.

Taken before me this 15th November 1838.

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

(True copy.)
(signed) *W. T. Trotter,* Magistrate and Justice of the Peace.

Depositions of Mr. *Wyatt,* taken by me this 27th November 1838.

Will you have the goodness to state whether the gun now shown to you is the one with which you shot the deceased Faqueera?—Yes, this is the gun with which I shot the deceased.

How long have you been at Bhugwanpore factory?—Since 1836, and remained there until November 1837; and then again went there in June, where I have been ever since.

Have you anything more to urge, or any other witnesses whom you wish to be examined?—I have nothing more to urge, nor any other witnesses whom I wish to be examined.

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

(True copy.)
(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

Magistrate's Office,
the 27th November 1838.

Depositions of Mr. *David Brodie,* residing at Punchour, Zillah Tirhoot, Indigo Planter; taken 15th November 1838.

From the thannah inquest proceedings, it appears that Mr. Wyatt stands accused of having caused the death of one Faqueera, by discharging a fowling-piece loaded with ball. Will you have the goodness to state the particulars of the case?—That on the 10th instant I went to Bhugwanpore to pass the day with Mr. Wyatt, and about three o'clock in the afternoon Mr. Wyatt and myself went out after a dog, Mr. Wyatt with a gun in his hand; Mr. Wyatt fired at the dog from the verandah of the bungalow and hit him slightly, when both myself and Mr. Wyatt pursued him about 600 or 700 yards, but could not find him. On returning to the bungalow there were two sheep grazing in a field about 200 yards from the bungalow, when Mr. Wyatt bet a rupee with me that he would hit the black sheep. He fired at the sheep, missed the sheep, and immediately heard a cry of "Bap, bap." Immediately after that, Mr. Wyatt, myself, and the bearer of Mr. Wyatt, went into a sugar-cane field from whence the noise proceeded, to ascertain if any one was hit, but saw no one; after which we went to the bungalow, where Mr. Collingridge was, and related the circumstance to him, and Mr. Wyatt at the same time sent orders to his syces and grass-cutters to ascertain if they could find or see any man. After they had been away some time, say seven or eight minutes, we all, viz. Mr. Wyatt, Mr. Collingridge, and myself, heard a man crying out in a very mournful way, when we three immediately went to the place to see what was the matter, when several people who were present called out that there was a man lying dead in a ditch; then Mr. Wyatt, Mr. Collingridge and myself, went to the spot, and saw a man lying dead. We then took him out of the ditch as to ascertain whether he was dead or alive, and found that he was quite dead. We left the corpse where it was, returned to the bungalow, when Mr. Wyatt immediately sent a man on horseback for the thanadar.

Whose

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Whose sheep were they Mr. Wyatt was firing at?—They were Mr. Wyatt's.

How do you know that these sheep were Mr. Wyatt's?—I only know that they were Mr. Wyatt's from his having told me so.

Did you see the deceased or any other man where Mr. Wyatt was firing?—No, I neither saw the deceased or any other in the direction of the place Mr. Wyatt was firing.

Were any precautions taken by Mr. Wyatt before firing to prevent accident?—Yes. We both went behind the sheep, opposite to the sugar cane, to fire in the direction of the sugar cane, that the ball might be spent before there was a chance of its hitting any one.

Where was this said Fuqueera when the occurrence took place?—He was between us and the sugar cane, in a ridge of grass of about three or four yards in breadth, and in length probably about 100 yards.

What was the man doing at the time?—I believe he was cutting grass.

On what side of the ditch was he?—When we saw him he was lying in the ditch, and the grass ran on each side of the ditch about three feet.

Was there any grass cut there, and on which side of the ditch?—There was some cut on the side nearest the sugar cane; on the opposite side of the ditch from me there were three or four bundles lying there.

How high was the grass?—About six feet high.

Do you know anything about this Fuqueera, whether he is in Mr. Wyatt's service, and whether any previous altercation took place?—I am not aware who the said Fuqueera is, nor whether he is in Mr. Wyatt's service, nor whether any previous altercation took place.

How far were the sheep from where Mr. Wyatt was shooting; and how far beyond that was the place where the deceased was found dead?—The sheep were about 150 yards, and the place where the deceased was found about 50 yards further on.

Do you know anything further connected with this case?—I know nothing more regarding the occurrence.

Taken before me this 15th November 1838.

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

(True copy.)

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

When your depositions were first taken down by me on the 15th of this month, you were not put on your oath. You have now heard them read to you; I therefore request to be informed whether you can now swear to the truth of them or not?—I can swear to everything which has been read to me, with the exception of that part of my answer to the first question, in which I deposed "that Mr. Wyatt fired at the dog from the verandah." I should have said, "He fired at the dog at two or three yards outside of the verandah;" all the rest I swear to.

Sworn before me this 28th day of November 1838.

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

(True copy.)

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

Depositions of Mr. *Collingridge,* residing at Dine Chuprah Factory, Zillah Tirhoot.

From the proceedings held in the case of Mossummut Joomnee *v.* Mr. Wyatt, it appears that you were in the bungalow when Mr. Wyatt shot the deceased, by name Fuqueera; will you, therefore, have the goodness to state the particulars on oath, and to the best of your knowledge?—I can so far state, that I saw a dog run past the bungalow, and I heard Mr. Wyatt say that he would load the gun to shoot the dog; and to the best of my knowledge he did load the gun at the time; that he ran out of the bungalow, and a few minutes afterwards, or rather instantly I should say, I heard the report of the gun; and after an interval, to the best of my memory, of a quarter of an hour, I heard the report of another barrel; and some time after that, probably about 10 minutes, Mr. Wyatt came to the bungalow and mentioned to me that he was afraid he had shot a man in the sugar cane, but had gone into the field and searched all about, but could not find any one: on my remarking that a few men might search in the sugar cane for some time, and if a body was there it might not be found from the thickness of the crop, he, Mr. Wyatt, called his bearer or his syce, and told him to send more men into the field to search. Immediately afterwards I went down, accompanied by Mr. Wyatt and Mr. Brodie, towards the place where the accident was supposed to have happened, and when we were about 60 or 50 yards from the place, I saw the people that Mr. Wyatt had sent to search collected together, and supposed from that circumstance that they had found the body; upon which we immediately went to the spot and saw the body lying in the ditch; that he was quite dead, and that we ordered the

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the men that were there to take him out and place him in the field; after which we returned to the bungalow, when Mr. Wyatt immediately sent notice to the thanadar.

Will you have the goodness to state what kind of ditch it was that you saw the body lying in; whether there was any grass, and of what sort?—The ditch might have been about two feet deep, and the grass about three feet or more; certainly not less.

If the man was in the ditch and cutting grass, was it possible for him to have been seen from the outside?—Certainly not, that if the man were either in a stooping or sitting position, he could not have been seen.

Did Mr. Wyatt mention the cause to you of his wishing to shoot the dog?—No, he did not mention the cause of his wishing to shoot the dog.

Mr. Wyatt states in his defence, that on returning from the search after the dog, he saw two of his sheep in a field near the bungalow, when he said to Mr. Brodie that he would bet him a wager he would shoot the black sheep; do you know anything of that circumstance?—I heard Mr. Wyatt mention that he had been shooting at a sheep, but am not aware whether it was a black or white.

Did you happen to see any sheep in the field in which Mr. Wyatt was shooting?—No, I did not; I was in the bungalow at the time.

Do you know whether Mr. Wyatt used any precaution to prevent accident, before firing at the sheep?—He mentioned to me that he considered that he was perfectly safe in firing, as the sugar-cane field was in front of him, and that the ball would be spent in passing through such a large field of cane.

Do you know whose sheep Mr. Wyatt was firing at?—I heard Mr. Wyatt mention that they were his own.

Are you aware how far Mr. Wyatt stood in firing from the place where the occurrence took place?—I am not aware of that.

Are you aware of there having been any previous dispute between Mr. Wyatt and the deceased?—Not that I am aware of.

Do you know anything of this said Fuqueera, and whether he was a servant of the factory?—I heard that he was not, and that that was the first day that he had ever worked there.

Do you recognise the gun now shown to you as the one with which Mr. Wyatt shot the deceased?—To the best of my recollection that is the gun.

Did you see the wounds on the deceased?—Yes, I did.

Of what nature were they, and how inflicted?—To the best of my recollection the bullet entered the left arm, and passed into the side.

Did you observe any blood in the ditch?—No, I cannot say that I did.

By Mr. *Wyatt.*

Mr. Wyatt asks whether you recollect any man beating his own breast, and crying; and whether he is the same person as the one now present in the court?—To the best of my recollection. I recollect a person beating his breast, and that this is the person (showing him Meherwan, brother of the deceased).

Mr. Wyatt further asks whether, since this man in his evidence says that he wilfully shot him on account of arrears of rent, whether you are aware that he has anything to do with the rents, or Mr. Robertson?—I am aware that Mr. Wyatt has nothing to do with the rents, and that Mr. Robertson, of Belsund, has the entire management of the collections.

Do you know whether the deceased cultivated lands in Bhugwanpore factory?—I am not aware of that.

Sworn before me this 28th November 1838.

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

(True copy).

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

Pershun, Witness to the Defence, Examined. Of the Kuhar Caste; aged 40 years.
15th November 1838.

It appears from the thanadar's report, that Mr. Wyatt has shot a person, by name Fuqueera; what do you know concerning this?—On Saturday the 10th November 1838, after three o'clock, a dog came near the bungalow; the above gentleman loaded his gun, and fired at the dog; the bullet slightly hit the dog, and it ran away; Mr. Wyatt, Mr. Brodie, and myself went in pursuit of the dog, but could not find it.

How far did you go?—About 10 or 12 cuttahs; but we did not find the dog. On the above-mentioned gentleman's returning to the bungalow there were two sheep grazing in a field of tooree; the above-mentioned gentleman fired at the black sheep, but missed it.

Where did the ball strike?—The bullet entered into the jungle, in which a man was cutting grass; it hit him, when he cried out, "Bap, bap." Having heard the cry, we all, viz. Messrs. Wyatt, Brodie, and myself, went near the place from which it proceeded, and

asked,

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asked, "Who are you?" but no answer was returned. On this we all returned to the bungalow. At this time also, Meherwan, the brother of the deceased, was searching in the grass: the Sahib asked him, "Where has he gone?" he replied, "He fled through fright." After this the Sahib ordered the syce to search for . . . man, who was crying out, "Where has gone?" then he went away to search, and found him in a ditch. Upon this his brother Meherwan began to weep; on this Messrs. Collingridge, Brodie, and Wyatt, and myself went to see the man. When we asked Meherwan, "What's the matter?" he answered, "The bullet has hit my brother Fuqueera;" and the corpse was in the ditch; we took it out.

Was he at that time dead or alive?—He was dead. After this we left the corpse and returned to the bungalow.

Who are his heirs?—His brother and his wife are.

How far was the man from the place where the Sahib fired?—About 200 yards, at the rate of two hauths to the yard.

At the time of firing did the Sahib take any precaution to see if there was any one there?—The Sahib was unaware of any one being there; there was a sugar-cane field there, and the ditch in which the corpse was found was close to this field.

Whose sheep were those he fired at?—They were his own.

How do you know they were the Sahib's?—The Sahib purchased them in my presence; from this I know them.

Had Fuqueera any connexion with the factory?—None; his brother Meherwan is a factory servant.

Where did Fuqueera reside?—A coss to the east of the factory, in a village by name Simree.

Did Fuqueera work at the factory?—No, he did not work at the factory, but his brother Meherwan is a factory servant.

Do you know anything further in this case?—I know nothing further.

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

(True copy.)
(signed) *W. T. Trotter,* Magistrate and Justice of the Peace.

Whereas Mr. G. N. Wyatt, residing at Bugwhanpore, zillah Tirhoot, stands accused, according to the thanna inquest proceeedings, of having shot one Fuqueera Noortaff with a ball discharged from a fowling piece, and in consequence died thereof, and having voluntarily delivered himself up to the magistrate of Tirhoot, is required to appear before the magistrate of Tirhoot when called upon to answer the charge; I, Mr. K. Mackinnon, do hereby bind myself to produce the said Mr. G. N. Wyatt before the said magistrate when called upon, and to be answerable for his appearance until a final order be passed by the magistrate on the said charge: in default whereof I further bind myself to forfeit to Government the sum of Rs. 5,000. In this I will not fail.

Dated 17 November 1838, A. D. (signed) *K. Mackinnon.*

Tirhoot, Office of the Magistrate and Justice of the Peace.—Acknowledged before me,
(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

Whereas I, Mr. G. N. Wyatt, residing at Bhugwanpore, zillah Tirhoot, stand accused, according to the thanna inquest proceedings, of having shot one Fuqueera Noorhuff with a ball discharged from a fowling piece, and in consequence died thereof, having voluntarily delivered myself up to the magistrate of Tirhoot, do hereby engage to appear before the magistrate of Tirhoot, when called upon to answer the charge: in default I further bind myself to pay a fine of 5,000 Rs. to Government, in the event of non-attendance; and further, any expense which may be incurred in compelling my attendance. In this I will not fail.

Dated 20 November 1838. (signed) *G. N. Wyatt.*

Tirhoot, Office of Magistrate and Justice of the Peace.
(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

Whereas Mr. G. N. Wyatt, residing at Bhugwanpore, zillah Tirhoot, stands accused, according to the thanna inquest proceedings, of having shot one Fuqueera Noorbaff with a ball discharged from a fowling piece, and in consequence died thereof, and having voluntarily delivered himself up to the magistrate of Tirhoot, is required to appear before the magistrate of Tirhoot when called upon to answer the charge; I, Mr. J. Gale, do hereby bind myself to produce the said Mr. G. N. Wyatt before the said magistrate when called upon,

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upon, and to be answerable for his appearance until a final order be passed by the magistrate on the said charge: in default whereof I further bind myself to forfeit to Government the sum of Rs. 5,000. In this I will not fail.

Dated 17 November 1838, A.D. (signed) *J. Gale.*

Tirhoot, Office of Magistrate and Justice of the Peace.—Acknowledged before me,

(signed) *W. T. Trotter,*
Magistrate and Justice of the Peace.

List of the Papers in the Case of Mossummat Joomnee and Meherban, Prosecutors, *versus* Mr. Wyatt.

1 English letter of magistrate, No. 15, to the address of Secretary to Government, Judicial Department.
1 Deposition of Luchoomun Thacoor, witness to the inquest.
1 Ditto - of Hurtinjee - - - - ditto - - ditto.
1 Ditto - of Doorga Dutt - - - ditto - - ditto.
1 Ditto - of Mossumat Joomnee, prosecutrix.
1 Ditto - of Meherwan, prosecutor.
1 Ditto - of Shief Sief, witness to the circumstances of the case.
1 Ditto - of Doomer - ditto - - - ditto.
1 Ditto - of Kanee - ditto - - - ditto.
1 Ditto - of Moradun ditto - - - ditto.
1 Ditto - of Golamally ditto - - - ditto.
1 Ditto - of Bustee - ditto - - - ditto.
1 Ditto - of Ramnath Moonshee, - - ditto.
1 Ditto - of Radhey, witness to the circumstances of the case.
1 Ditto - of Burrasey - ditto - - - ditto.
1 Ditto - of Jungee - ditto - - - ditto.
1 Ditto - of Jhummon Roy, ditto - ditto.
1 Ditto - of Horill - - ditto - - - ditto.
1 Ditto - of Jeetun - - ditto - - - ditto.
1 Ditto - of Junkee - ditto - - - ditto.
1 Ditto - of Byjnauth - ditto - - - ditto.
1 Ditto - of Busgit - ditto - - - ditto.
1 Ditto - of Seetah - ditto - - - ditto.
1 Ditto - of Sietah Doosadh, ditto - ditto.
1 Ditto - of Golam Nubbee, ditto - ditto.
1 Ditto - of Bhudie - ditto - - - ditto.
1 Ditto - of Darshun - ditto - - - ditto.
1 Ditto - of Wyatt - ditto - - - ditto.
1 Ditto - of Mr. D. Brodie, witness to the defence.
1 Ditto - of Mr. Collingridge, ditto - - ditto.
1 Ditto - of Pershun Cuhar, ditto - - ditto.
1 Sketch of the place where the occurrence happened.
3 Copies of bail bonds.

(No. 253.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to *John Pearson*, Esq. Advocate-general.

Sir,

I AM directed to request that you will favour the Honourable the Deputy-governor of Bengal with your opinion as to the propriety or otherwise of Government prosecuting Mr. Wyatt, a British-born subject, in the Supreme Court, for having shot one Fuquerah, the particulars relating to which are detailed in the accompanying documents.

Original letter from the magistrate of Tirhoot, dated 25 Jan. 1839, together with accompaniments.

I am, &c.

Fort William,
5 February 1839.

(signed) *J. H. Young,*
Deputy Secretary to the Government of Bengal.

P.S.—You will be pleased to return the enclosure now forwarded, along with your reply.

No. 6.
Europeans amenable to Criminal Law of Mofussil.

From *John Pearson*, Esq. Advocate-general, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

I HAVE read with attention the papers submitted to me relative to the death of a native, by the act of Mr. Wyatt, and beg to submit it as my opinion, to the Deputy-governor of Bengal, that there is no ground for submitting the case to the Supreme Court. None of the witnesses for the prosecution speak of the act itself otherwise than by hearsay (which is not admitted in an English court), except perhaps Maherban; and he is contradicted by the circumstance, that when he searched he could not find the body of the deceased. It is, however, clear that he did meet his death from the gun of Mr. Wyatt, as is proved by the admission of that gentleman and the depositions of his witnesses; but then this evidence clearly shows the circumstances to have been accidental.

On the whole, I am of opinion that a grand jury would not even find a bill; and I should certainly advise that no further steps should be taken in an affair which, though very unfortunate, does not seem to have been criminal.

I have, &c.

Fort William, 13 February 1839. (signed) *John Pearson*,
Advocate-general.

(No. 282.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *W. J. Trotter*, Esq. Magistrate of Tirhoot.

Judicial Department.

Sir,

YOUR letter (No. 17) of the 25th ultimo, submitting copies of your proceedings in the case of Mr. Wyatt, a British-born subject, charged with having shot a native named Fuqueerah with a ball discharged from a fowling-piece, having been referred to the Advocate-general for his opinion, I am directed to transmit to you the accompanying copy of a letter from Mr. Pearson, of the present date, and to inform you, that under the circumstances therein stated, the Honourable the Deputy-governor of Bengal concurs in opinion with the Advocate-general, that no further steps need be taken in the affair.

I have, &c.

Fort William, 13 February 1839. (signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 152.)

Legis. Cons. 29 November 1841. No. 18.

From *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, in the Legislative Department, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

I AM directed by the Right honourable the Governor-general in Council to transmit to you, for the consideration of the Law Commissioners, in connexion with the code of procedure under preparation, copies of the following papers, viz.:

Letter No. 1676, from Mr. Secretary Halliday, dated 2d instant, with enclosure, on the want of tribunals for the trial of British born subjects in the Mofussil charged with heinous offences.

Letter No. 1668, from Mr. Secretary Halliday, dated 9th instant, with enclosures, on the subject of contempt of courts by British-born subjects.

I have, &c.

Council Chamber, 29 Nov. 1841. (signed) *F. J. Halliday*,
Officiating Secretary to the Government of India.

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(No. 1522.)

Legis. Cons. 15 November 1841. No. 7.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Judicial Department.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter in original (No. 1589), from the superintendent of police, Lower Provinces, dated the 21st ultimo, forwarding copies of correspondence on the subject of the liabilities of British-born subjects holding lands in perpetuity or in farm to the general regulations in force.

I have, &c.

Fort William, 5 October 1841.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

P.S.—Please to return the enclosures.

Legis. Cons. 15 November 1841. No. 8.

From *W. Dampier*, Esq. Superintendent of Police, Lower Provinces, to *F. J. Halliday*, Esq. Secretary to Government of Bengal, Judicial Department.

Sir,

Mr. Samuells' letter to Nizamut Adawlut.
Reply of Nizamut Adawlut.
Letter of Superintendent to Nizamut Adawlut, No. 1588, of the 21st September 1841.

I HAVE the honour to transmit, for the consideration of the Right honourable the Governor of Bengal, the accompanying copies of correspondence as per margin.

2. The subject is one I consider of very great importance, insomuch as the class of British subjects holding lands in perpetuity or in farm is increasing rapidly in numbers; and although no collision with reference to the Regulations quoted has as yet taken place, I am constantly expecting such to occur; for of course as the class increases, it becomes less select, and the chances of neglect of the Regulations or defiance of them are augmented.

3. I am inclined to differ from the opinion generally expressed by the Court of Nizamut Adawlut, on the reference made by Mr. Samuells, as the Regulations provide for a sudder farmer or farmer being liable to the same responsibilities as a zemindar; but as British subjects are, to my knowledge, holding farms of wards' estates and khas mehals to a considerable extent in some districts, if the opinion of the Court is correct, the local government officers must in these cases be held responsible for the execution of the Regulations, as being the representatives of the manager and zemindar.

I have, &c.

Office of Superint. of Police, Lower Provinces, Monghyr, 21 Sept. 1841.

(signed) *W. Dampier*,
Superint. Police, Lower Provinces.

(No. 99.)

From *E. A. Samuells*, Esq. Magistrate of Tirhoot, to *J. A. F. Hawkins*, Esq. Register, Sudder Nizamut Adawlut, Fort William.

Sir,

I HAVE the honour to request that you would obtain for me the opinion of the Court upon the following point:—

2. The Court are aware that a great portion of the land in this district is leased to indigo planters, who are, with few exceptions, British-born subjects. In the pottahs and koobooleats containing the terms of these leases, there is invariably a clause inserted, to the effect that the shekadar or lessee shall be responsible for the performance of all those duties and obligations connected with the police, which, by the Regulations, are imposed upon the landholder. Now this engagement, so far as the indigo planter is concerned, is a mere mockery, inasmuch as there exists no law under which I can punish a British-born subject for a breach of the Regulations referred to. The question therefore arises, whether an agreement of this sort is in any way binding upon the magistrates; whether the unauthorised substitution

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Europeans amenable to Criminal Law of Mofussil.

substitution by the landholder of a deputy who is not amenable to particular laws, can be held to relieve the landlord from the responsibility which those laws impose upon him. It seems clear to me that it cannot, and that in such a case the magistrate must continue to look to the landholder as the responsible party. I shall be glad, however, to have the Court's opinion on the subject.

I have, &c.

Tirhoot Magistracy, 17 May 1841. (signed) *E. A. Samuells*, Magistrate.

(True copy.)
(signed) *E. A. Samuells*, Magistrate.

(No. 2484.)

From *J. Hawkins*, Esq. Register, to the Magistrate of Tirhoot.

Sir,

With reference to my letter (letter No. 2056, of the 28th May last,) I am directed by the Court to inform you that no private engagement between the landholder and another person can release the former from the due performance of such acts as he is bound by the Regulations of Government to perform.

Nizamut Adawlut. Present:—R. H. Rattray, C. Tucker, E. Lee Warner, Esqrs. Judges; J. A. T. M. Reid, Esq. Supy Judge.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William, 9 July 1841.

(No. 1588.)

From *W. Dampier*, Esq. Superintendent Police, Lower Provinces, to *J. Hawkins*, Esq. Register to the Court of Nizamut Adawlut, Fort William.

Sir,

I have been furnished by Mr. Samuells with copies of his letter to your address, No. 99, of the 17th May last, and of the Court's reply to him, No. 2484, of the 19th July.

2. The subject of that correspondence is of such importance that I am induced to address the Court regarding it, especially as the reference made by Mr. Samuells does not appear to me to have brought the case in its fullest bearing before the Court.

3. By Act XI. of 1836, all persons were brought under the jurisdiction of certain civil courts therein expressed, and subsequently, by Act IV. of 1837, it was made lawful for any subject of his Majesty to acquire and hold in perpetuity, or for any terms of years, property in land, &c.; but although the rules by which such property might be acquired and held by natives were then extended to all such persons, there was no stipulation in that, nor is there in any subsequent law, for the due performance of the different police duties by British subjects, being zemindars or farmers, which by the customs and previous laws of the country can be compelled from native zemindars, farmers and others.

4. At present, in almost every district of the Lower Provinces, British subjects are located as proprietors of estates and sudder farmers under the court of wards and government in the khas mehals, as well as holders from zemindars, so that there is a large, very influential, and increasing class of holders, who are not bound by any of the regulations regarding the maintenance of the mofussil police, or the different laws prescribing rules for the early communication of offences, and the keeping up the zemindaree dawks.

5. Hitherto no inconvenience has been felt from this omission; but if a magistrate was to proceed against a British subject, holding lands under section 20, Regulation XII. of 1807; section 13, Regulation IX. of 1808; section 3, Regulation VI. of 1810; section 10, Regulation I. of 1811; section 12, Regulation III. of 1812; section 2, Regulation VIII. of 1814; or section 10, Regulation XX. of 1817; for neglect of any of the rules laid down in these laws, his jurisdiction would be immediately denied, and he would be compelled to admit that he had not the power to administer the regulation for the maintenance of good order and the efficiency of the police in estates belonging to or held by British subjects.

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6. I beg also to submit with all respect, that there is nothing whatever to prevent the zemindars making over their estates or farm, with all the liabilities, to British subjects. The Regulations which I have quoted above, distinctly and clearly admit the right of the landholders to do so by providing for the responsibility of sudder farmers and farmers where such exist. A zemindar, therefore, who has made over his estate in farm to a British subject cannot, I think, be made to perform duties, or be punished for the neglect of them by the British farmer, which he would not be called upon to do were his estate farmed to a native; the law of 1837 has made such a transfer perfectly legal, and the omission is, on the part of the Government, to have provided for British subjects holding lands being amenable to the rules in force for the maintenance of an efficient police.

I have, &c.
(signed) *W. Dampier*,
Superintendent of Police, Lower Provinces.

Office of Superintendent Police, Lower Provinces,
at Monghyr, 21 September 1841.

(No. 1628.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Legis. Cons. 15 November 1841. No. 9.

Sir,

I AM directed by the Right honourable the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government, the accompanying letter* and its annexations from the Register of the Nizamut Adawlut, relating to the responsibility and liabilities attaching to landholders in certain matters of police.

* No. 3681, dated the 15th instant.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
26 October 1841.

(No. 3681.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Legis. Cons. 15 November 1841. No. 10.

Sir,

I AM directed to request that you will submit, for the consideration of the Right honourable the Governor of Bengal, the accompanying copy of correspondence, as per margin, on the subject of the responsibilities and liabilities attaching to landholders in certain matters of police, and to observe that the Court see no reason to alter the opinion expressed by them in concurrence with the Western Court, on the reference of the magistrate of Tirhoot, to the general effect that the landholders continuing such, cannot divest themselves by any private acts of the responsibilities attaching to them in such cases. This construction does not bar the extension of the responsibility equally to farmers holding under the proprietor.

Nizamut Adawlut. Present:—R. H. Rattray, C. Tucker, and J. F. M. Reid, Esqrs. Judges.
From Magistrate of Tirhoot, No. 99, 17 May 1841.
To Nizamut Court, No. 2057, 28 May 1841.
From Nizamut Court, No. 788, 22 June 1841.
From Superintendent of Police, No. 1588, 21 Sept. 1841.

2. The law in regard to European British subjects, is correctly stated by the superintendent; the application of a remedy, however, is for the consideration of the Legislature.

I have, &c.
(signed) *J. Hawkins*, Register.

Fort William,
15 October 1841.

(No. 99.)

From the Magistrate of Tirhoot to the Court.

I HAVE the honour to request that you would obtain for me the opinion of the Court upon the following point.

2. The Court are aware that a great portion of the land in this district is leased

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leased to indigo planters, who are with few exceptions British-born subjects. In the pottahs and kubooleats, containing the terms of these leases, there is invariably a clause inserted to the effect that the shekadar or lessee shall be responsible for the due performance of all those duties and obligations connected with the police, which by the Regulations are imposed upon the landholder. Now this engagement, so far as the indigo planter is concerned, is a mere mockery, inasmuch as there exists no law under which I can punish a British-born subject for a breach of the Regulation referred to. The question therefore arises, whether an agreement of the sort is in any way binding upon the magistrate? whether the unauthorized substitution by the landholder of a deputy who is not amenable to particular laws can be held to relieve the landlord from the responsibility which those laws impose upon him? It seems clear to me that it cannot, and that in such a case the magistrate must continue to look to the landlord as the responsible party. I should be glad, however, to have the Court's opinion upon the subject.

17 May 1841. (signed) *E. A. Samuells.*

(No. 2057.)

From the Presidency Court to the Western Court.

I AM directed by the Court to request that you will lay before the judges of the Court of Nizamut Adawlut for the Western Provinces, the accompanying copy of a letter from the magistrate of Tirhoot, No. 99, dated the 17th instant.

2. They propose, with the concurrence of the Western Court, to inform Mr. Samuells that no private engagement between the landholder and another person can release the former from the due performance of such acts as he is bond by the Regulations of Government to perform.

28 May 1841. (signed) *J. Hawkins*, Register.

(No. 788.)

From the Western Court to the Presidency Court.

I AM directed to acknowledge the receipt of your letter, No. 2057, dated 28th ultimo, and in reply to communicate the concurrence of this Court in the reply proposed to be given to the magistrate of Tirhoot on the point referred by him, that no private engagement between the landholder and another person can release the former from the due performance of such acts as he is bound by the Regulations to perform.

22 June 1841. (signed) *M. Smith*, Register.

(No. 1588.)

From the Superintendent of Police, Lower Provinces, to the Court.

1. I HAVE been furnished by Mr. Samuells with copies of his letter to your address, No. 99, of the 17th May last, and of the Court's reply to him, No. 2484, of the 9th July.

2. The subject of that correspondence is of such importance that I am induced to address the Court regarding it, especially as the reference made by Mr. Samuells does not appear to me to have brought the case in its fullest bearing before the Court.

3. By Act XI. of 1836, all persons were brought under the jurisdiction of certain civil courts therein expressed; and subsequently, by Act IX. of 1837, it was made lawful for any subject of his Majesty to acquire and hold in perpetuity, or for any terms of years, property in land, &c.; but although the rules by which such property might be acquired and held by natives were then extended to all such persons, there was no stipulation in that, nor is there in any subsequent law, for the due performance of the different police duties by British subjects being zemindars or farmers, which by the customs and previous laws of the country can be compelled from native zemindars, farmers, and others.

4. At present in almost every district of the Lower Provinces British subjects are located as proprietors of estates and sudder farmers under the court of wards and government in the khas mehals, as well as holders from zemindars; so that

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there is a large, very influential, and increasing class of holders, who are not bound by any of the Regulations regarding the maintenance of the mofussil police, or the different laws prescribing rules for the early communication of offences, and the keeping up the zemindary dâks.

5. Hitherto no inconvenience has been felt from this omission; but if a magistrate was to proceed against a British subject holding lands under section 21, Regulation XII. of 1807; section 13, Regulation IX. of 1808; section 3, Regulation VI. of 1810; section 10, Regulation I. of 1811; section 12, Regulation III. of 1812; section 2, Regulation VIII. of 1814; or section 10, Regulation XX. of 1817, for neglect of any of the rules laid down in these laws, his jurisdiction would be immediately denied, and he would be compelled to admit that he had not the power to administer the Regulations for the maintenance of good order and the efficiency of the police, in estates belonging to or held by British subjects.

6. I beg also to submit, with all respect, that there is nothing whatever to prevent the zemindars making over their estates or farms, with all the liabilities, to British subjects. The Regulations which I have quoted above distinctly and clearly admit the right of the landholders to do so, by providing for the responsibility of sudder farmers and farmers where such exist. A zemindar, therefore, who has made over his estate in farm to a British subject, cannot, I think, be made to perform duties, or be punished for the neglect of them by the British farmer, which he would not be called upon to do was his estate farmed to a native. The law of 1837 has made such transfer perfectly legal, and the omission is, on the part of the Government, to have provided for British subjects holding lands being amenable to the rules in force for the maintenance of an efficient police.

(signed) *W. Dampier.*

21 September 1841.

(True copies.)
(signed) *J. Hawkins,* Register.

(No. 143.)

Legis. Cons. 15 November 1841. No. 11.

From *T. H. Maddock,* Secretary to the Government of India, to *L. Peel,* Esq. Advocate-general.

Sir,

Letter from Secretary Government of Bengal, No. 1522, of 5th Oct. 1841, with Enclosures.

I AM directed by the Right honourable the Governor-general in Council to transmit to you copies of the papers noted in the margin, on the subject of the liabilities of European British-born subjects holding lands in perpetuity or in farm, and to request that you will favour his Lordship in Council with your opinion on the question proposed by the superintendent of police, Lower Provinces, and generally upon the nature of the rules to which, in your opinion, the Act would be construed to apply.

I have, &c.
(signed) *T. H. Maddock,*
Secretary to the Government of India.

Council Chamber,
18 October 1841.

Legis. Cons. 15 November 1841. No. 12.

From *Laurence Peel,* Esq. to *T. H. Maddock,* Esq. Secretary to Government of India.

Sir,

I HAVE the honour to state, in answer to your letter of the 18th October 1841, that I have perused the correspondence which accompanied it, and have considered the several Regulations of Government referred to in Mr. Dampier's letter of the 21st September last, addressed to Mr. Hawkins, marked 1588, and the Acts of the Indian Legislature therein referred to; and you will favour me by laying before the Right honourable the Governor-general in Council, the opinion which I have written on the subjects upon which it was desired.

The words of the Act IV. of 1837, comprised in the 2d section, are general, and the word "rules" which is used therein is large enough to include, and in my opinion includes, as it was probably intended to include, as well the Government Regulations

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Regulations framed from time to time under the authority conferred by the various statutes which relate to this subject, as such general laws or customs of the country which would apply to any landowner or dependent holder, whatever his origin or his creed. The Regulations do not apply to British subjects in terms, and were not intended to apply to them, as they were then prohibited from holding lands; nor were the penal enactments which they contain capable of being enforced against such persons. The Act, in my opinion, extends to British subjects who may now become landowners or renters, all the provisions of these Regulations, as well as the general laws or customs of the country which affect persons in those characters. The Statute 13 Geo. 3, sections 36 and 37, uses the words, rules, ordinances, and regulations; some of the subsequent statutes use the same words; one uses the term "regulation" merely, but it speaks of the rules and ordinances included in the regulations; and the statutes taken together in relation to this subject of regulations, show sufficiently that the words are used by the Legislature as equivalent terms, and the Act of the Indian Legislature adopts the term "rule" as the most comprehensive. It would be an unreasonable construction to read the Act in a narrower spirit, and to suppose that the principal laws relating to the duties and charges of and upon the landowners, were not in the contemplation of the Legislature when they took off the restriction which previously lay upon British subjects, from holding lands in India. The words cannot mean rules of descent, nor of acquisition, nor of transfer, since there is no *lex loci* governing landed estates; and it would be difficult to give any meaning to the term, unless one of a general and comprehensive character were given to it. Convenience is in favour of this construction. But although a British subject was, in my opinion, intended to be subjected, in his character of a landowner or tenant, to the same general laws to which natives are subject in the same character, yet I think the intention of the Legislature is frustrated in a great degree by the want of jurisdiction in the magistrate in the Mofussil, to exercise penal authority over British subjects: this power is not conferred, and I think it cannot be implied, and I agree with Mr. Dampier in the opinion which he expresses on this part of the subject. A British subject purchasing the absolute ownership, and filling the character of a zemindar, could neither be fined nor imprisoned by a local jurisdiction for any of the defaults to which such penalties are attached by the Regulations above referred to; the former zemindar would be discharged, for the duties are attached to a particular character which he would no longer fill. But if, instead of an absolute transfer, the British subject acquired but a limited estate, or had a dependent tenure from a native zemindar, then, in that case, I agree with the opinion expressed by the Court of Nizamut Adawlut, in answer to the reference made to them by Mr. Samuells, for it appears to me that the Regulations impose a conjoint liability, and it is to the zemindar that the rule looks in the first instance. I have found no Regulation which exempts him whilst he holds that character; and the practice of requiring engagements for the due performance of these duties from the British subjects who become their tenants, favours his view of the case.

I have, &c.

30 October 1841. (signed) *Laurence Peel.*

MINUTE by the Honourable *A. Amos*, Esq.

Legis. Cons. 15 November 1841. No. 13. Responsibilities of landholders.

I CONCUR generally with what Mr. Peel has written on this subject, which is in the main consonant to what I noted when I recommended the reference.

With regard to Mr. Peel's opinion that a zemindar continues liable notwithstanding he has leased, if he has not parted with his entire property, this must depend on the particular terms of each law or regulation, and on the nature of any usage in question; viz. whether the law applies to zemindars, or to the occupiers and *pro tempore* proprietors only.

Where the alienation is of the entirety of the interest, it appears that there is a manifest defect in the law with regard to various important matters of administration; where the alienation is partial only, as by way of lease, this may be somewhat doubtful; but at all events, even in this case, it is a great practical inconvenience if the ostensible occupier on the spot is not responsible or chargeable.

I subjoin a draft Act calculated to supply what appears to be wanting.

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AN ACT for the better enforcing of the Duties incident to the Tenure of Lands.

WHEREAS doubts have arisen whether all subjects of Her Majesty acquiring and holding property under the provision of Act No. IV. of 1837, are subject to the same jurisdiction as natives acquiring and holding such property, in regard to charges and duties incident to the tenure thereof: It is hereby declared and enacted, that all subjects of Her Majesty acquiring and holding property under the provisions of the aforesaid Act, shall be liable to the same charges and duties as natives in respect of the tenure of lands held by them in perpetuity, or for a term of years; and such charge and duties may be enforced by the like means and by the same authorities as in the case of natives holding such property.

1 November 1841. (signed) *A. Amos.*

Legis. Cons. 15 November 1841. No. 14.

The following Draft of a proposed Act was read in Council for the first time on the 15th November 1841.

ACT No. —— of 1841.

AN ACT for the better enforcing of Duties incident to the Tenure of Lands.

WHEREAS doubts have arisen whether all subjects of Her Majesty acquiring and holding property under the provisions of Act No. IV. of 1837, are subject to the same jurisdiction as natives acquiring and holding such property, in regard to charges and duties incident to the tenure thereof:

It is hereby declared and enacted, that all subjects of Her Majesty acquiring and holding property under the provisions of the aforesaid Act, shall be liable to the same charges and duties as natives in respect of the tenure of lands held by them in perpetuity, or for a term of years; and such charges and duties may be enforced by the like means and by the same authorities as in the case of natives holding such property.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 15th day of February next.

(signed) *T. H. Maddock,*
Secretary to the Government of India.

Fort William,
Legislative Department, 15 Nov. 1841.

(No. 150.)

Legis. Cons. 15 November 1841. No. 15.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

WITH reference to your letters, No. 1522 and 1628, of the 5th and 26th ultimo, with enclosures, relating to the responsibilities of European British-born subjects holding lands in perpetuity, I am directed to transmit to you, for submission to the Right honourable the Governor of Bengal, the accompanying copy of a draft of a proposed Act this day read in Council for the first time, for any observations his Lordship may be desirous to offer on its provisions in communication with the Sudder Court and superintendent of police.

2. The original enclosures of your letter are returned herewith.

I have, &c.
(signed) *T. H. Maddock,*
Secretary to the Government of India.

Council Chamber,
15 November 1841.

(No. 493.)

Legis. Cons. 21 June 1843. No. 8.

From the Officiating Deputy Secretary to the Government of Bengal, Judicial Department, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

IN continuation of my letter, No. 1178, of the 30th August last, I am directed by the honourable the Deputy-governor of Bengal, to request that you will submit for

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for the consideration and orders of the Supreme Government, the accompanying copy of a letter from the Register of the Sudder Court, No. 307, of the 17th ultimo, and of its enclosures, relating to the want of a law defining the liabilities, in matters of police, of British subjects holding lands in the mofussil.

I have, &c.
(signed) *John S. Torrens,*
Officiating Dep^{y} Sec^{y} to the Gov^{t} of Bengal.

Fort William, 3 April 1843.

(No. 307.)

From the Register of the Nizamut Adawlut to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Legis Cons. 21 June 1843. No. 9. Enclosure.

Sir,

With reference to my letter No. 3681, of the 15th October 1841, I am directed by the Court to transmit to you, to be laid before the Honourable the Deputy-governor, the accompanying copy of a letter, and of its enclosure, from the Sessions Judge of Midnapore, as evidence of the inconvenience which is felt for want of a law defining the liabilities, in matters of police, of British subjects holding lands in the mofussil.

Nizamut Adawlut. Present:—R. H. Rattray, C. Tucker, and J. F. M. Reid, Esqrs. Judges.

I have, &c.
Fort William, 17 March 1843. (signed) *J. Hawkins*, Register.

(No. 40.)

From the Session Judge of Midnapore to *J. Hawkins*, Esq. Register of the Nizamut Adawlut, Fort William.

Sir,

I beg leave to lay before the Court the copy of a letter to my address from the magistrate of this district, under date the 8th ultimo, (No. 52.)

It appears to me, that with reference to every description of guards employed in aid of the police, the magistrate may legally call upon European landholders to furnish lists, showing their names, allowances and other particulars, and consequently that he may fine them in the event of their refusing or neglecting to comply with his requisition.

I have, &c.
Midnapore, 3 March 1843. (signed) *J. Dunbar*,
Session Judge.

(No. 52.)

From the Officiating Magistrate of Midnapore to *J. Dunbar*, Esq. Session Judge of Midnapore.

Sir,

I have the honour to request you will have the goodness to obtain for me the opinion of the Court of Sudder Nizamut Adawlut; can European British subjects, whether landholders, merchants, or indigo planters, be punished under section 21 of Regulation XII. of 1807, for refusing or omitting to furnish lists of all burkundazes or other description of guards employed by them in conformity with that Regulation?

2. If the Regulation quoted is not applicable to European landholders, I beg to be informed what course should be adopted with reference to such parties on their refusing to supply the lists required.

I have, &c.
(signed) *R. R. Harrison*,
Camp Kudgelughur, 8 February 1843. Officiating Magistrate.

Legis. Cons. 21 June 1843. No. 10.

MINUTE by the Honourable *C. H. Cameron.*

Draft Act for the Enforcement of Duties incident to the Tenure of Land.

I HAVE put up with these papers some others on the same subject, which Mr. H. T. Prinsep sent me at the time of his embarkation. I thought he said he had minuted upon them, but I find no minute of his.

I think it clear that legislation is required upon this subject; but I confess that without more full knowledge than I have at present of the charges and duties incident to the tenure of land, I should hesitate to agree to this general enactment, especially as I remember Mr. Prinsep told me that in his opinion some of them were not fit to be continued.

I would recommend that the papers should be referred to the Law Commissioners to investigate the nature of all these charges and duties, and having considered which (if any) ought to be discontinued, to draw an Act extending the rest to all holders of land, and settling the question on which the Sudder seems to differ from other authorities.

15 April 1843.

(signed) *C. H. Cameron.*

(No. 47.)

Legis. Cons. 21 June 1843. No. 11.

From *T. R. Davidson*, Esq. Officiating Secretary to the Government of India, to Secretary Law Commissioners.

Sir,

I AM directed by the Honourable the President in Council to request that you will lay before the Law Commissioners the accompanying copies of papers as per margin.

Legis. Cons. 15 Nov. 1841. 7 to 15.
From the Government of Bengal, dated 18 Jan. 1842, No. 101, with Enclosure.
From the Government of Bengal, dated 4 July 1842, No. 827, and Enclosure.
From the Government of Bengal, dated 30 August 1842, No. 1178, and Enclosures.
From the Government of Bengal, dated 3 April 1843, No. 493, and Enclosure.

2. By Act IV. of 1837, it was made lawful for any subject of the Crown to acquire and hold in perpetuity, or for any term of years, property in land, &c.; but although the rules by which such property might be acquired and held by natives were then extended to all such persons, there was no express provision made for the due performance by British subjects, being zemindars or farmers, of the different police duties, which by the custom and previous laws of the country could be compelled from native zemindars, farmers and others. At the time no particular case had arisen involving the question, but it was feared, from the great number of indigo planters who held lands as proprietors and farmers, that the magistrates could not in respect to them administer or enforce the Regulations.

3. The advocate-general, who was consulted on the subject, submitted his opinion that by the terms of Act IV. of 1837, British subjects becoming landowners or renters were subject to the laws, regulations and customs of the country, which affect persons in those characters. But he remarked that the magistrates, for want of jurisdiction in such cases, could exercise no penal authority for any of the defaults to which penalties are attached by the Regulations.

4. It was however held by the Sudder Court at Calcutta, supported by the Allahabad Court, that no private arrangement between a landholder and another person, could release the former from the due performance of such acts as he is bound by the regulations of government to perform. This opinion, which continues to hold individuals responsible as zemindars, after they have let in farm or made over their estates to British subjects, is, in the opinion of the President in Council, open to question: at all events it is a great practical inconvenience when the ostensible occupier on the spot is not responsible or chargeable with the duties incident to the tenure of land, and where the alienation is of the entirety of the interest, the defect in the law is the more manifest with regard to important matters of administration.

5. But while the Court held to its opinion in regard to landholders who farmed out their estates, but did not cease to be landholders, it was of opinion that the state of the law in regard to European British subjects called for a remedy. Accordingly

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cordingly the draft of an Act was read on the 15th of November 1841, entitled "An Act for the better enforcing of Duties incident to the Tenure of Lands."

6. The draft was considered by the Sudder Court to be well suited for the object in view. The superintendent of police expressed his opinion that it should "state the laws under which the charges and duties to be imposed on British subjects are specified, and also that provisions should be made for British subjects being liable to all future enactments regarding the tenure of lands."

7. On the 3d of April last the subject was again brought before the Government by the Court of Nizamut Adawlut, in consequence of a reference made to the Court by the Judge of Midnapore, at the requisition of the magistrate of that district, requesting an opinion whether European landholders could be punished for refusing or omitting to furnish lists of all burkundauzes or other description of guards employed by them, in conformity with Regulations which are enforced upon natives.

8. The Honourable the President in Council is satisfied that legislation is required upon the subject; but before passing the draft of Act read in November 1841, or any other draft formed thereon, is anxious to be favoured with the sentiments of the Law Commission. Without more full knowledge than he has at present of the charges and duties incident to the tenure of land, and especially as he understands some of these duties may fitly be discontinued, he hesitates to pass the draft Act read in November 1841; I am instructed therefore to request that the Law Commissioners will investigate the nature of these charges and duties, and after having considered which, if any of them, ought to be discontinued, they will be pleased to draw out an Act declaratory of the liabilities of all holders of land.

I have, &c.
Council Chamber, (signed) *T. R. Davidson*,
21 June 1843. Officiating Secretary to the Government of India.

(No. 31.)

From the Indian Law Commissioners to the Right Honourable *Edward* Lord *Ellenborough*, Governor-general of India in Council.

We have the honour to submit a Report on the subject of rendering British subjects amenable to the courts established in the interior for the administration of criminal justice. In preparing this Report, we have had under consideration the reference made to us by order of the Honourable the President in Council, under date the 21st June last.

From T. R. Davidson, Esq. Officiating Secretary Government of India, 20 June 1843.

2. In the despatch dated 10th December 1834, in which the Honourable the Court of Directors communicated to the Government of India their sentiments upon certain subjects regarding which it would be the duty of the Government to legislate under the powers conferred by the Act 3 & 4 Will. 4, c. 85, and the directions contained therein, they observed, with regard to British-born subjects, that "when the Act says you shall not pass laws making them capitally punishable, otherwise than by the King's courts, it does, by irresistible implication, authorize you to subject them in all other criminal respects, and in all civil respects whatever, to the ordinary tribunals of the country."

Para. 58.

"We are decidedly of opinion (they said) that all British subjects throughout India should forthwith be subjected to the same tribunals with the native. It is of course implied in this proposition, that in the interior they shall be subjected to the mofussil courts." "Now that Europeans are to become inhabitants of India, they must share in the personal liabilities as well as in the civil rights pertaining to that capacity." "In our view you cannot possibly fulfil the obligation of protecting the natives of India from insult and outrage, according to the direction in clause 85 of the Act, unless you render both natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally, and on equal terms, accessible to all." "But though an Englishman be made amenable to the same tribunal with the native, and though his rights be placed under the same supervision and protection, it does not follow that those

Para. 59.

Para. 60.

Para. 61.

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rights are to be determined by the same rule." "Even in criminal cases, where distinctions are least desirable, they may be sometimes necessary."

3. By Act XI. of 1836, of the Indian Legislature, British subjects residing in the territories under the government of the East India Company, were made subject to the jurisdiction of the Company's civil courts, excepting, in Bengal and Madras (not in Bombay), the courts of moonsiffs. By Act III. of 1839, they were made subject to the jurisdiction of these courts, and of the revenue courts, in all proceedings connected with arrears and exactions of rent. By a late Act, VI. of 1843, they have been made subject generally to the jurisdiction of the moonsiffs' courts in the presidency of Bengal, and we have recommended the same to be enacted for Madras.

Report, 17 May 1843, p. 32.

4. British subjects having been made subject to the local civil courts, it was by Act IV. of 1837 (a supplement to clause 86 of the statute) made lawful for them to acquire and hold in perpetuity, or for any term of years, property in land, or in any emolument issuing out of land, in any part of the territories of the East India Company, subject to all rules which prescribe the manner in which such property may be held by natives.

5. Thus British subjects, in all civil respects, have been subjected to the same tribunals with the natives, and having been admitted to the privileges of natives with respect to the acquisition and tenure of lands, they are, in regard to the same, in all questions not being questions of inheritance, succession, and the like, subject to a common law.

6. With respect to other matters in general, and to questions of succession, &c. in the case of lands, we have in our Report, dated 31st October 1840, proposed that British subjects, in all places of the local jurisdiction of Her Majesty's courts, shall be subject to so much of the substantive law of England as is applicable to their situation, and not inconsistent with any regulation of the codes of Bengal, Madras, or Bombay, or with any Act of the Council of India, saving also good and lawful customs.

7. But while British subjects resident in the interior have been rendered amenable to the local tribunals in all civil controversies, they have not yet been made subject to the local criminal courts. Hence the magistrates are without power to enforce against such as are landholders, under Act IV. of 1837, the penalties to which they are liable under that Act for failure of the duties incumbent on them, in common with natives, in the character of landholders.

Enclosures in letter from Officiating Secretary to Government of India, 21 June 1843.

8. We concur in the opinion of the late Advocate-general (now Chief Justice at Calcutta), "that the word 'rules,' in the second section of the Act, includes as well the Government Regulations framed from time to time under the authority conferred by the various statutes which relate to this subject, as such general laws or customs of the country which would apply to any landowner or dependent holder, whatever his origin or creed; and that the Act extends to British subjects who may become landowners or renters all the provisions of these regulations, as well as the general laws or customs of the country which affect persons in those characters; but that the intention of the Legislature is frustrated in great degree by the want of jurisdiction in the magistrates in the mofussil to exercise penal authority over British subjects." "This power," the Advocate-general observed, "is not conferred," and we think with him, that "it cannot be implied."

Letter from Officiating Secretary to Government, dated 21 June 1843.

9. It has been proposed to pass a special Act to empower the magistrates to enforce the duties in question in the case of British subjects, being landholders, and the draft of the Act prepared for this purpose has been referred for our consideration; but a special Act would not be necessary if British subjects were made generally amenable to the local criminal courts. The duties incumbent on them as landholders would then be enforced, of course, under the "rules" referred to in the Act as applicable to native landholders.

10. There has never been a doubt, we believe, of the expediency, indeed the necessity of rendering British subjects amenable to the authority of the criminal as well as of the civil courts within whose jurisdiction they reside in the interior, for the reasons stated by the Court of Directors. But it was thought fit, as the first step, to revise the penal laws of the several presidencies, and to frame a general code of criminal law adapted to all classes, to be substituted for them; such

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a code was prepared by the Law Commissioners, and submitted to the Government of India, under date the 14th October 1837.

11. In a Report, dated the 19th January 1838, the Law Commissioners having expressed their sentiments upon certain cases referred to them, of offences committed by British subjects in the interior, took occasion to submit to Government their opinion, that if there were reason to expect that a general penal code would be enacted in the course of a short time, it would be expedient to abstain from special legislation intermediately, but that if, on the contrary, the enactment of a penal code was not an event that could confidently be anticipated within a short definite period, a law should at once be prepared, providing for the trial of British-born subjects in the interior for many classes of offences there committed not of a very heinous nature.

12. No answer has been received to that Report, but on the 29th November 1841, the Government of India transmitted to us an extract from a despatch from the Court of Directors, containing remarks upon the obstruction to justice arising from "the want of tribunals for the trial of British-born subjects in the mofussil, charged with heinous offences," and expressing the hope of the Court that at no distant period this defect would be supplied. In making this communication to us, the Government desired that the subject should be taken into consideration with the Code of Procedure.

13. Our president has informed us that the Honourable Court have again adverted to the subject in a despatch under date the 14th December 1842, in which, referring to the case of a British-born subject who had been sent from Benares to Calcutta to be tried by the Supreme Court, on a charge of theft, they observe that this case shows the necessity for giving jurisdiction over such offences to local tribunals.

14. Apprehending that the enactment of a general penal code, applicable alike to British-born subjects and to natives, is not an event that can confidently be anticipated at an early period, and thinking it advisable that the intention of placing British subjects under the jurisdiction of local criminal courts should be carried into effect without further delay, we have had under consideration the means by which this object may be accomplished, and we have now the honour to report to your Lordship in Council the measures which appear to us to be expedient for this purpose, and our views in regard to the penal laws which, for the present, should be applied to British subjects by the local courts which may be invested with jurisdiction over them.

15. The primary object of course is to provide, as directed by the 85th section of the statute, "for the protection of the natives from insult and outrage on their persons, religions, or opinions." But, as observed by the Law Commissioners, in their Report dated 19th January 1838, "it seems unreasonable and unjust to deny an Englishman in the interior the same protection which a native of India has there, especially now that an Englishman has a right to exercise or travel in a great part of the interior as a native of the country has."

16. In making this observation, the Law Commissioners had in view the case of a British-born subject charged with having violently assaulted another British-born subject at Cochin, on the Malabar coast, in the Presidency of Madras, in which case the person assaulted had no legal means of bringing the offender to justice, but by proceeding with all his witnesses quite across the peninsula of India to Madras, and there prosecuting before the Supreme Court. This, it was observed, would only have been injuring himself more than he had before been injured by the offender, and if the Government had prosecuted, though the expense thereby incurred by the Government would have fallen upon the people of India in a mass, the effect would have been the same as respects the personal loss and inconvenience of the prosecutor and witnesses. We are of opinion, therefore, that British-born subjects should be amenable to the local tribunals for crimes and offences committed in the interior, as well upon charges brought against them by their own countrymen as by natives.

17. We concur with the Court of Directors in thinking that though it be fitting and right to make Englishmen living among the natives in the interior, amenable to the same tribunals with the natives, it is not absolutely necessary for the object in view that they should be made subject generally to the same substantive law

Despatch, dated 10 Dec. 1834, Par. 61, quoted above.

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in regard to rights and obligations, or even to the same adjective law for preventing infractions of rights and obligations, although the latter is very desirable, and should be accomplished as early as possible. The principle is, that the persons and properties of all the inhabitants of the country shall be under the same protection; that every one injured in his person or his property shall be equally able to obtain redress; that every one having a demand or complaint, civil or criminal, against another, shall be equally able to bring it to a judicial determination.

18. With respect to the substantive law by which the rights and obligations of British subjects should be determined by the provincial courts, we have fully expressed our sentiments in our Report dated 31st October 1840, already adverted to. Until a general criminal code shall be enacted, we are of opinion that the penalties which should be applied to British subjects by the provincial courts, for offences committed by them within the jurisdiction of such courts, are the penalties to which they would be liable for similar offences committed by them at the presidencies.

19. By the 46th section of the Statute 3 & 4 Will. 4, c. 85, the Government of India is restrained from making, without the previous sanction of the Court of Directors, any law or regulation whereby power shall be given to any court of justice, other than the courts of justice established by Her Majesty's charters, to sentence to the punishment of death any of Her Majesty's natural-born subjects born in Europe, or the children of such subjects. The Court of Directors, in the despatch above referred to, have signified that they are not prepared to sanction a law to empower any courts but those of Her Majesty to pass sentence of death; but they have said that they know not whether there is any crime for which, within this clause, British subjects may not be made amenable to the country tribunals, provided that the law, in giving that tribunal jurisdiction over the crime, shall empower them to award to it some other punishment than death.

Para. 7.

20. Since the despatch of the Court of Directors to which we refer was written, the criminal law applicable to British subjects in India has been greatly altered, particularly in regard to capital punishments. The Act of the Government of India, XXXI. of 1838, embodies the provisions of the several statutes for the amendment of the criminal law passed in the first year of Her Majesty. An explanation of this Act was given by the late chief justice of the Supreme Court at Calcutta, in a charge to the grand jury, as follows: "Its principal object is to take away capital punishments and to mitigate the rigour of the law." "This Act modifies and restricts the application of capital punishment in the following classes of offences, and provides appropriate secondary punishments for such of them as it is thought ought no longer to be visited with capital punishment: 1. Malicious injuries. 2. Burglary. 3. Robbery. 4. Burning and destroying ships." "First, as to malicious injuries. The only case in which death is to be inflicted, is when the direct intention to murder is evidenced by the overt acts of administering poison, attempting to drown, suffocate or strangle; if cutting or striking are accompanied by the further overt act of actually causing some bodily injury dangerous to life, when these acts are done with the intent to murder, and no bodily injury is effected, the party is liable to transportation for life, &c. So also when the intention is to maim, &c. the shooting at, stabbing, cutting or maiming, is no longer a capital felony, but a transportable offence. Section 84 of 9 Geo. 4, c. 74, relating to burglary, is repealed; section 85 is also repealed, and capital punishment withdrawn from offences analogous to burglary, namely, stealing in a dwelling-house, and putting a person in fear, stealing to the value of 50 sicca rupees, &c. These are now transportable offences."

1st Sessions, 1839, Appendix to Smoult & Ryan's Rules and Orders of the Supreme Court, p. lviii.

21. Robbery, "capital by the common law, and by the Statute 9 Geo. 4, c. 74, s. 80, the Chief Justice observed was also made a transportable offence, when unaccompanied with wounding."

22. In concluding his remarks upon the new Criminal Act, the Chief Justice said, "The result of the whole as to capital offences is, that in the following cases, 14 in number, capital punishment is abolished:"—

1. Attempting to murder, when no injury inflicted.
2. Attempting to maim, disfigure, &c. &c.
3. Robbery without wounding.

4. Threatening

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4. Threatening to accuse of an infamous crime.
5. Burglary without violence.
6. Housebreaking.
7. Stealing in a dwelling-house, and putting in fear.
8. Stealing in a dwelling-house to the value of 50 sicca rupees.
9. Plundering a wreck.
10. Arson, when life is not endangered.
11. Destroying ships, when life is not endangered.
12. Destroying wrecks.
13. Preventing escape from wreck.
14. Principals in the second degree, and accessories before the fact in the above felonies.

The capital offences that remain under 9 Geo. 4, c. 74, and Act XXXI. of 1838, are—

1. Returning from transportation, s. 31, 9 Geo. 4, c. 74 (though no longer capital in England, by 4 & 5 Will. 4, c. 67).
2. Murder.
3. Attempt to murder, when injury inflicted.
4. Sodomy.
5. Rape.
6. Abuse of female children under eight years of age.
7. Robbery with wounding.
8. Burglary with assault (with intent to murder).
9. Arson, where person within house, and life endangered.
10. Riotously destroying buildings.
11. Destroying ships, and life endangered.
12. Exhibiting false lights.

23. We do not think it expedient at present to give to the provincial tribunals jurisdiction over British-born subjects, in cases in which they are charged with any of the crimes which are now capital by the law administered by the Supreme Courts; such cases we would leave to be dealt with according to the existing law.

24. We propose that British subjects charged with offences committed in the mofussil, for which, when committed in the mofussil, or at any of the presidencies, they may now, under any Act of Parliament or of the Indian Legislature, be tried summarily and punished by a justice of the peace*, shall be liable to be tried and to be punished to the same extent by the subordinate criminal courts and magistrates, that is to say, by the "subordinate criminal courts" established under Act VII. of 1843, in the Presidency of Madras; by assistant judges holding courts at detached stations in the Presidency of Bombay; and by the magistrates (including "joint magistrates," and persons lawfully exercising the powers of magistrates,) in all the presidencies; provided that the officer presiding in such subordinate criminal court, or the assistant judge, or the magistrate, as the case may be, is in the commission of the peace. By this proviso the jurisdiction in question will be virtually confined to British subjects, since none but a British subject can be a justice of the peace for the provinces. We believe that all covenanted civil servants are in the commission of the peace. The subordinate criminal courts in the Madras Presidency being partly under principal sudder ameens, of whom some may be British subjects, we think that all such should be included in the commission of the peace, to qualify them to exercise this jurisdiction. When the principal sudder ameen of a subordinate criminal court is a native, the magistrate will of course take up all cases of this description. In dealing with such cases we intend that the subordinate criminal courts and magistrates shall follow the ordinary procedure.

* Including petty thefts, such as at Calcutta are now cognizable by a justice of peace, under Act XXI. of 1839, and III. of 1842.

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53 Geo. 3, c. 155, s. 105.

25. Under the proposed provision the subordinate criminal courts and magistrates will have power to punish British subjects for assault, forcible entry, or other injury accompanied with force done against the person or property of a native, by fine not exceeding 500 rupees, or in default of payment by imprisonment for two months. We propose that they shall have the same power in cases in which the injury is done to a British subject.

9 Geo. 4, c. 74, s. 97.

* By Act XVII. of 1837 of the Government of India, however, a justice of the peace is empowered to pass a sentence of imprisonment for two years, with a fine in addition for offences against the Post-office law.

26. The highest amount of punishment which may be inflicted by a justice of the peace in India under the present statute law is imprisonment for 12 months*, and our first intention was that the subordinate criminal courts and magistrates should have power to adjudicate generally upon charges against British subjects for offences which would be punished sufficiently by imprisonment not exceeding that term, or fine not exceeding 500 rupees; but seeing that the offences now subject to the jurisdiction of the Supreme Courts exclusively, which under the English law might be punished by imprisonment or fine within those limits, are generally liable to higher penalties, it appeared to us that it would tend to produce irregularity if it were left a question for discretion in every case whether the offence should be reserved for the cognizance of the lower court, or remitted to the higher one; and as the cases in question, whether more or less aggravated, must now be tried by the Supreme Courts with a jury, we have thought it to be expedient that, in the beginning at least, the power to try them should be confined to the Courts of Session, in which, under the provisions we contemplate, defendants will have a right to demand that their trials shall be held in the presence of assessors.

† At Calcutta and Bombay petty thefts.

27. We propose that the jurisdiction of the Courts of Session shall embrace all cases in which British subjects are charged with offences, not capital, committed in the mofussil, for which at present they can be tried only by the Supreme Courts (excepting such as we intend to fall to the jurisdiction of the subordinate criminal courts and magistrates, as being cognizable when committed at some of the presidencies by justices of the peace†), and that British subjects convicted of such offences on trial by the Courts of Session, shall be liable to the same penalties (with the exceptions we shall hereinafter suggest) to which they would be liable if they were tried and convicted in the Supreme Courts.

28. We think that the procedure for bringing British subjects before the Courts of Session should be the same as is observed in other cases cognizable by them. With respect to the mode of trial, we are of opinion that British subjects arraigned before those courts should have the option of being tried by the judge alone, or by the judge aided by three assessors, one of them at least being a British subject, in the manner proposed in section 2 of the draft Act submitted by the Law Commissioners in the Report dated 31st August 1838 (upon the establishment of a subordinate criminal court at Calcutta), to which Report we beg to refer for our reasons for recommending the institution of assessors instead of a jury. We would particularly solicit attention to the observations in paragraph 14 of that Report, and to note therein referred to.

29. In our Report dated the 8th February 1842, upon the administration of justice in the Straits settlements, we recommended that all cases not capital, but above the jurisdiction proposed to be assigned to magistrates, should be tried with the aid of assessors, leaving capital cases to be tried by a jury, as capital cases committed in the provinces will still, under the arrangements we are now proposing, be tried in the Supreme Courts at the Presidencies. Considering the difficulty of obtaining the assistance of competent assessors in many parts of the country, we would not recommend for the present that it be made a positive rule that assessors shall be summoned for the trial of British subjects in all cases within the jurisdiction of the Courts of Session, but we are decidedly of opinion that British subjects should be entitled to claim this mode of trial.

30. We propose to make it a positive rule that one at least of the three assessors shall always be a British subject; we think it desirable that the majority should be of that class, but we do not insist upon this, as there may be a difficulty sometimes in procuring the attendance of two properly qualified.

31. We

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31. We would recommend that all gentlemen of the civil service not holding a judicial office, or employed in the administration of the police, and military and medical officers, be made liable to serve as assessors, if need be, as in Australia, until lately (and probably in some other Crown colonies), military officers were liable to serve on juries. We are of opinion that nothing would more tend to reconcile respectable natives to this duty than to find themselves associated in it with the gentlemen of the services as well as with other British subjects.

32. We propose that all cases tried by the Courts of Session, with or without assessors, in which persons are convicted of offences liable to the punishment of transportation for a term exceeding seven years, or an alternative punishment of less severity, or to the specific punishment of imprisonment for a term exceeding two years, shall be referred in like manner as, under the present system, cases tried by those courts in which they are not competent to pass a final sentence, are referred for the sentence of the Sudder Court, or of the college of justice, should such a tribunal be established at each presidency, as we have recommended.

33. We propose that the Courts of Session shall have power to pass sentence in all cases tried by them, in which the maximum penalty authorized by law is transportation for seven years. In general, in such cases, the alternative punishment of imprisonment is permitted. In most instances the term of imprisonment is limited to two years, but in some it is left to the discretion of the court without any limitation. In the Seventh Report of Her Majesty's Commissioners on Criminal Law, they recommend that the period of three years be fixed generally as the maximum term of imprisonment which may be inflicted in lieu of transportation for life or for a shorter term, observing that they regard it as settled by the late enactments of the Legislature, that no alternative term of imprisonment ought to exceed that period. In India, in the case of an European, imprisonment is a punishment very greatly more severe than it is in England, and we think that two years is the longest term that should be allowed as the alternative for transportation in the cases we intend to be disposed of by the Courts of Session. We propose, therefore, that the limitation of two years be applied to all cases in which by the law as it stands, imprisonment at the discretion of the Court may be substituted for transportation for a term not exceeding seven years. 1st & 5th Vict.

34. We propose also, that the Courts of Session shall be empowered to pass sentence of imprisonment for a term not exceeding two years in cases where imprisonment is the specific punishment prescribed by the law, and that limitation is expressly enjoined.

35. In cases punishable by imprisonment at the discretion of the Court, they should be empowered to dispose of such as, in the opinion of the judge, may be fitly punished with imprisonment for a term not exceeding two years; when the offence is considered to require a severer punishment, a reference should be made to the superior court at the presidency.

36. Under the existing law the Courts of Session have not the power of passing a sentence of transportation, because transportation is not authorized for any term short of life, on the principle that for offences not requiring that severe penalty imprisonment is a more suitable punishment for natives.

37. The Courts of Session in Bengal and Madras have power in a few special cases to pass sentence of imprisonment for 14 years, but generally the limit is seven years, as it is in Bombay in all cases. In the English law, transportation occupies the place of imprisonment in the codes for the Company's courts; and in providing for the application of English law to Englishmen convicted of crimes before those courts, we have thought it proper to assign to the Courts of Session the power of sentencing such criminals to transportation for the same terms as natives in ordinary may be sentenced by them to imprisonment, and to limit their power of imprisonment generally in the case of such persons to the maximum term authorized as a substitute for transportation.

38. In some cases in which imprisonment is authorized as the alternative punishment for transportation for a term limited to seven years, and also for a more

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more extended term, the punishment of whipping may be superadded. Her Majesty's Commissioners on Criminal Law, in the Seventh Report, have expressed their opinion, that it would be better to reject this species of punishment altogether, except in such a case as that in which it was lately prescribed by the British Legislature as a signal mark of ignominy. In the Penal Code prepared by the Indian Law Commissioners flogging is not placed in the list of punishments. In the notes to the Code, they observed that "being satisfied that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, they were unwilling to advise the Government to retrace its steps and to re-establish throughout the British territories a practice which, by a policy unquestionably humane and by no means proved to have been injudicious, has recently been abolished through a large part of those territories." We conceive that there can be no question of the impropriety of leaving British subjects exposed to corporal punishment, where it is not permitted to be inflicted upon natives amenable to the same tribunals; and as it is clearly desirable to make the law applicable to British subjects uniform throughout the territories in which the Company's courts have jurisdiction, we recommend that those courts be restricted everywhere from inflicting the punishment of whipping upon British subjects. In cases referred to the Sudder or other superior court at the presidency, in which the specific punishment prescribed by the law is imprisonment, but where the term is left to the discretion of the Court, we propose that the maximum shall be the same as that fixed in all the instances in which it is defined when imprisonment is authorized as the alternative punishment for transportation for life, or for any term of years, viz. four years.

Stat. 5 & 6 Vict. c. 51.
Note A., par. 13.

39. We take this opportunity however to observe, that if, as assured by the Commissioners of Criminal Law at home, the enactments of 1st and 5th Vict. are to be regarded as a legislative declaration that no alternative term of imprisonment ought to exceed three years, it seems to be advisable, in communication with the Judges of Her Majesty's Courts, to revise the provisions of the statute 9 Geo. 4, c. 74, and of the Indian Act XXXI. of 1838, whereby imprisonment for four years is authorized as the alternative for transportation "for life or for any term of years." The Act XXXI. of 1838 was founded on the statutes of 1 Vict. c. 85, 86, 87 and 89, but it differs from them in substituting four years instead of three years as the maximum of the alternative punishment of imprisonment in cases in which transportation for life may be inflicted.

40. We are not informed of the reason for deviating on this point from the statutes referred to, but perhaps the object was to preserve uniformity with the statute 9 Geo. 4, c. 74, which, as altered by the Act, forms together with it what may be called the penal code of Her Majesty's courts in India. If this were the object, we think the better way of effecting it would have been to adopt in the Indian Act the maximum term of imprisonment specified in the statutes of 1 Vict., and to assimilate thereto the maximum term of imprisonment authorized by the statute of 9 Geo. 4 as the alternative for transportation. It appears to us that this is what should be done now.

41. Some other discrepancies between the Act XXXI. of 1838 and the statutes of 1 Vict. are deserving of notice. In sections 4 to 7 of the Act, transportation is authorized for life, or for any term of years; whereas in the corresponding clauses of 1 Vict. c. 85, it is prescribed that the term of transportation shall not be less than 15 years. The same remark applies to sections 14, 15. 21. 24, 25. 27, 28. In section 10 of the Act the provision regarding transportation is the same as above stated, but the minimum in the statute is 10 years. By section 12 of the Act, transportation may be for life or for any term, but by the statutes the maximum term is limited to 15 years, the minimum being 10 years. This remark applies also to sections 16 and 26.

S. 3, 4, 5, 6.
C. 87, s. 3, 4.
C. 89, s. 3. 6, 7, 9, 10.
Sec. 86, s. 3.
Sec. 5.

42. We propose that for all offences by commission or omission against positive enactments in the "Regulations" of the several presidencies, or in the Legislative "Acts" of the Supreme Government, relating to the police of this country, British-born subjects shall be amenable to the authorities indicated in the said "Regulations" and "Acts" respectively, in common with natives, and liable to the penalties therein prescribed for such offences, provided that such penalties shall not be adjudged in the case of British-born subjects by any but officers legally exercising the

C. 87, s. 8.
C. 89, s. 8.

the powers of magistrates or a superior criminal jurisdiction, and being in the commission of the peace.

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43. An enactment to this effect we conceive will answer the special purpose of the draft Act which was lately referred for our consideration, as above noticed, while it will provide, as appears to us to be requisite, for the general enforcement of the mofussil laws, in the case of British subjects as well as others, in matters relating to the administration of police, which are from their nature beyond the scope of the laws administered by Her Majesty's courts.

44. The provisions of Act XXX. of 1841 will be sufficient for the repression of contempts and other obstructions of justice committed by British subjects in the presence of the criminal tribunals to which we propose that they shall be amenable in the mofussil, and it does not appear to us that anything more is requisite than to declare that those tribunals shall be vested generally with the same powers for the exercise of this new jurisdiction as they are vested with for the exercise of their ordinary jurisdiction over natives of this country. Referring to the correspondence which accompanied the letter from the Secretary to the Government of Bengal, transmitted to us by Mr. Secretary Maddock, under date the 29th November 1841, we take this opportunity to observe that the provision here proposed would remedy the defects noticed by the judge of the 24 Pergunnahs, as magistrates or other committing officers would be authorized by it to take recognizances binding British subjects to prosecute and give evidence, and to enforce the same, and magistrates would be empowered also to bind them over to keep the peace and be of good behaviour.

Dated 9 Nov. 1841.

Sec. 5, Regulation IX. 1793, Bengal Code.
Sec. 10, Regulation X. 1816, Madras ditto.
Sec. 25, Regulation XII. 1827, Bombay ditto.
Sec. 4, Regulation IV. 1825, Bengal ditto.
Sec. 5, Regulation VI. 1827, Madras ditto.
Sec. 5, Regulation XII. 1827, Bombay ditto.

45. We are of opinion that an appeal should be allowed from a sentence passed upon a British subject by any subordinate court or magistrate in the mofussil to the Court of Session, and from a sentence passed by the Court of Session to the Sudder Court (or the college of justice), with the restriction in respect to cases tried with the aid of assessors proposed in clause 20, sect. 65, of the draft Act for the Administration of Justice in the Straits, submitted with our Report under date the 6th August 1842, viz., that in such cases the appeal shall be admitted only when the judgment of the subordinate court is challenged as wrong in point of law, or when it is contrary to the opinion of the majority of the assessors. We would suggest that this restriction be made applicable generally to all criminal cases tried with the aid of assessors.

46. We would further give authority to the Sudder Court, or other superior court (at the Presidency), to admit a special appeal from the decision passed by a Court of Session, on a regular appeal from the judgment of a subordinate criminal court or magistrate, upon such grounds as those upon which a special appeal is admissible under Act III. of 1843. Upon the principle on which that Act is founded, namely, that the ultimate decision of all questions of law shall rest with the highest judicial authority, we are of opinion that it is desirable to make a general enactment to the above effect; but we deem it peculiarly necessary in cases in which the offence must be judged by English law, and punished accordingly.

47. The Sudder Court, constituted as it is, with the aids available at the Presidency, would be tolerably competent to deal with such appeals; but a college of justice, constituted as we have proposed, would be perfectly qualified in itself for the performance of this duty.

48. We have considered whether the criminal jurisdiction now proposed to be granted to the mofussil courts, in regard to British subjects, should be exclusive of the jurisdiction of the Supreme Courts; and we are of opinion that it should be so ordered eventually, if, as we contemplate, a high court of appeal be established at each Presidency, upon the plan we have recommended.

49. With a court of appeal composed partly of judges trained in the English courts of law, we think there could be no reasonable objection to vesting the mofussil courts with exclusive jurisdiction over British subjects residing within the limits of their authority, in respect of all offences not capital.

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50. For the present, we deem it advisable not to bar the jurisdiction of the Supreme Courts. We apprehend, however, that they would seldom be called upon to exercise it. The cases in which prosecutions would most probably be instituted in the Supreme Courts are those in which British subjects clothed with official authority are complained of for abuse of their powers, and the like cases, which, on some grounds, it is desirable should still be brought before the Supreme Courts.

We are, &c.
(signed) *C. H. Cameron.* *D. Elliott.*
F. Millett. *H. Borradaile.*

Indian Law Commission,
4 Nov. 1843.

(No. 1.)

From the Indian Law Commissioners to the Honourable the President of the Council of India in Council.

Honourable Sir,

With reference to our Report under date the 4th November last, on the question of rendering British subjects in the interior amenable to the criminal jurisdiction of the Company's courts, we have the honour to submit for the consideration of your Honor in Council, the draft of an Act to give effect to the suggestions which we offered in that Report.

We have, &c.
(signed) *C. H. Cameron.* *D. Elliott.*
F. Millett. *H. Borradaile.*

27 January 1844.

Whereas Her Majesty's British subjects resident in the British territories in India, without the local limits of the jurisdiction of Her Majesty's Supreme Courts at Calcutta, and Madras, and Bombay, are now by law exempted from the jurisdiction of the criminal courts established by the East India Company in the said territories, to which all other persons, whether natives or others, inhabitants in the said territories, without the said limits, renders it necessary to provide against mischiefs or dangers that may arise therefrom, and it is expedient for this object that British subjects in all parts of the said territories without the said limits should be amenable to the jurisdiction of the magistrates and criminal courts of the East India Company for all offences except such as are capital.

1. It is hereby enacted, that in all parts of the British territories under the Government of the East India Company without the local limits of the jurisdiction of Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay, British subjects shall be amenable to the jurisdiction of the magistrates and criminal courts of the East India Company.

2. Provided, that no such criminal court shall take judicial cognizance of any case in which a British subject shall be charged with a capital offence.

3. And provided, that no such magistrate or criminal court shall exercise jurisdiction upon a British subject, unless such magistrate or the judge holding such court be a justice of the peace.

4. And provided, that British subjects convicted of offences by such magistrates or criminal courts shall only be liable to the same penalties as they would have been liable to if this Act had not been passed, except as hereinafter provided.

5. And it is hereby enacted, that the procedure of such magistrates and criminal courts respectively, in cases in which British subjects are charged with offences, shall be governed by the same rules as in other cases, except as is hereafter provided.

6. And

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6. And it is hereby enacted, that it shall be competent to the magistrates and criminal courts subordinate to the Courts of Session in the said territories without the said limits to take cognizance of all cases now cognizable by justices of the peace, in which British subjects shall be charged with offences alleged to have been committed within their jurisdiction respectively; and upon conviction, to inflict upon the offenders such penalties as may be inflicted by justices of the peace in the like cases.

7. And it is hereby enacted, that it shall be competent to such magistrates and subordinate criminal courts to take cognizance of cases in which British subjects shall be charged by any persons whatsoever with any of the offences described in section 105, Statute 53 Geo. 3, c. 155, alleged to have been committed within their jurisdiction respectively, and upon conviction to sentence the offenders to be punished in the manner and to the extent specified in the said section of the said statute.

8. And it is hereby enacted, that it shall be competent to such magistrates and subordinate criminal courts to take cognizance of cases in which British subjects shall be charged with any of the offences described in Acts XXI. of 1839 and III. of 1842 of the Governor-general of India in Council, alleged to have been committed within their jurisdiction respectively, and upon conviction to sentence the offenders to be punished in the manner and to the extent specified in the said Act XXI. of 1839.

9. And it is hereby enacted, that it shall be competent to the Courts of Sessions to take cognizance of all cases in which British subjects shall be brought before them charged with offences not capital, and not falling within the provisions of sections 6, 7, and 8 of this Act, alleged to have been committed within their jurisdiction respectively.

10. And it is hereby enacted, that in any case in which a British subject shall be brought before a Court of Session for trial upon any charge, it shall be competent to such person to demand that he shall be tried by the judge with the aid of assessors, of whom the number shall be not less than three, and one at least shall be a British subject, but if no such demand be made the trial shall be held by the judge alone.

11. And it is hereby enacted, that in every case in which a British subject shall be tried in the presence of assessors, the trial shall be conducted, as in other cases, by the judge, but it shall be competent to every assessor to put questions to the witnesses through the judge; provided, that it shall be competent to the judge to refuse to put questions that are irrelevant or otherwise objectionable.

12. And it is hereby enacted, that on the conclusion of a trial held in the presence of assessors the judges shall sum up the evidence on both sides, and the assessors shall thereupon deliver their opinions seriatim, and the judges having heard and considered the said opinions, shall pronounce the accused guilty or not guilty according to his own opinion, but shall nevertheless state in the finding the opinions of the assessors.

13. And it is hereby enacted, that the rules contained in Schedule (A.) annexed to this Act, regarding the qualification of assessors, the manner of summoning assessors, the penalties to be imposed on persons not attending when summoned to serve as assessors, and the challenging of assessors, shall be taken to be a part of this Act.

14. And it is hereby enacted, that when a British subject shall be convicted by a Court of Session of an offence which by law is punishable by transportation for a term not exceeding seven years, or alternatively by imprisonment, with or without fine, for a term not exceeding two years, or at the discretion of the court, or which by law is punishable by imprisonment with or without fine for a term not exceeding two years, such court shall sentence the offender to be punished accordingly; provided, that the term of imprisonment adjudged by such court shall in no case exceed two years.

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15. And it is hereby enacted, that when a British subject shall be convicted by a Court of Session of an offence not punishable by such court under section 14, the said court shall transmit the proceedings held on the trial to the Sudder Court to which it is subordinate, in the same manner as in other cases tried by it in which a reference is directed to be made to the Sudder Court, and sentence shall be passed thereupon by the Sudder Court according to law.

16. Provided, that where the punishment authorized or prescribed by law is imprisonment at the discretion of the court, the term of imprisonment to which a British subject may be sentenced by the Sudder Court shall not exceed four years.

17. And it is hereby enacted, that the punishment of whipping shall not be inflicted upon any British subject by any magistrate or criminal court in any case tried under this Act.

18. And it is hereby enacted, for any breach of any law relating to the police of the country in force in any part of the said territories without the said limits committed by any British subject, such British subject shall be liable to the penalty prescribed by the law upon conviction by any officer lawfully authorized to take cognizance of such offence when committed by persons not being British subjects, provided such officer be a justice of the peace.

19. And it is hereby enacted, that when a fine is levied by any magistrate or criminal court, in execution of a sentence passed under this Act, it shall be competent to such magistrate or criminal court to apply the whole or any part thereof towards the reasonable costs of the prosecution, or by way of compensation to him.

20. And it is hereby enacted, that an appeal shall lie to the Courts of Session from sentences passed under this Act by magistrates or subordinate criminal courts, provided the appeal be made within one month from the date of sentence.

21. And it is hereby enacted, that an appeal shall lie to the Sudder Courts from sentences passed under this Act by Courts of Session, provided the appeal be made within three months from the date of the sentence, excepting cases tried with the aid of assessors, in which cases an appeal shall be allowed only when the judgment of the Court of Session is challenged as wrong in point of law, or when it is contrary to the opinion of the majority of the assessors.

22. And it is hereby enacted, that a special appeal shall lie to the Sudder Courts from the decisions of Courts of Session upon appeals from sentences passed by magistrates and subordinate criminal courts upon the grounds upon which special appeals are admissible in civil cases under Act No. III. of 1843 of the Governor-general of India in Council, and subject to the rules contained in that Act.

23. And it is hereby enacted, that by the term magistrate, as used in this Act, shall be understood any officer, however designated, who shall be duly authorized to exercise the powers of magistrate; and that by the term subordinate criminal court shall be understood any court vested with a criminal jurisdiction extending beyond that of the magistrate, but subordinate to the Court of Session.

(signed) *J. C. C. Sutherland*, Secretary.

— No. 7. —

ON STAMPS.

No. 7.
On Stamps.

(No. 66.)

EXTRACT from the Proceedings of the Honourable the Governor-general of India in Council, in the General Department, under date 23 September 1835.

Legis. Cons. 26 Oct. 1835. No. 4.

(Separate.)

STAMPS.

READ a letter from the Board of Customs, Salt, and Opium, dated the 1st instant, forwarding draft of an Act for altering certain portions of Regulation XII. of 1826, and Regulation X. of 1829.

Ordered, That the foregoing letter, with its enclosures in original, together with the correspondence noted in the margin, be sent to the Legislative Department for consideration.

Cons. 11 August 1834. Nos. 10 & 11.

Ordered, That the original papers be returned to this department when no longer required.

Cons. 10 February 1835. Nos. 16 & 17.

(True Extract).

(signed) *G. A. Bushby,*
Secretary to Government.

(No. 669.)

From the Board of Customs, Salt, and Opium, to the Honourable Sir *Charles Metcalfe*, Bart., Governor of Bengal.

India: Separate Cons. 20 October 1837. No. 12.

Board of Customs, Salt and Opium,
1 September 1835.

Honourable Sirs,

WITH advertence to our letter, No. 50, dated 16th January last, and its enclosure, and to the 5th paragraph of Mr. Secretary Prinsep's reply, dated 10th February, we have the honour to submit herewith the draft of an Act for altering and amending certain portions of Regulation XII. of 1826, and Regulation X. of 1829.

We have, &c.
(signed) *C. D'Oyly.*
H. M. Parker.

P. S.—We submit the papers adverted to above for ready reference, and solicit their return when no longer required.

Be it enacted, That such parts of the section 2, Regulation XII. of 1826, and section 14, Regulation X. of 1829, as direct that deeds, instruments, and writings executed upon unstamped paper, or on paper bearing stamps of inadequate value, by individuals from accident, ignorance, inadvertence, error, or from other unavoidable cause, shall be impressed with the requisite stamps, upon application made to the collector or other officer charged with collection of the stamp revenue, is herewith rescinded, and that the following rules be prescribed in lieu thereof.

See Separate Cons. 20 Oct. 1837. No. 13.

2. First, Individuals having in their possession documents written upon unstamped paper, which they may desire to render equally valid as if impressed with stamps of the value prescribed by the Regulations in force, shall apply in writing, and on unstamped paper, to the collector or other officer entrusted with the custody and vend of stamps, stating the particular stamp value which they desire to have affixed to their documents, as also the reasons of their not having in the first instance written out their documents on stamp paper.

Second. On such an application, with the document it refers to, being presented to the collector or other officer as aforesaid, he will levy from the holder of the document required to be stamped, the amount of penalty to which, under the Regulations in force,

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such documents requiring to be stamped may be liable, and the value of the stamp shall be held to be included in the said penalty; the collector or other officer will then take from his own store and attach to the document for which the stamp is required, a piece of stamped paper of the proper value, on which a certificate to the following effect shall be written, and then both shall be delivered to the holder.

No. of January (or as the case may be) 18th, the bond (or as the case may be) to which this stamp is attached is for rupees , and was executed on the of , 18 , by to .

The name of the subscribing witnesses are , and .
I have moreover numbered the bond to correspond with this stamp, No. , of January, 18 , (or as the case may be), and attached my signature to the same.

(signed) *A. B.* Collector.

Witnessed by

C. D. Serishtadar.
E. F. Stamp Darogah, or other officer of the collector's office.

3. On its appearing that a document bears a stamp of lower value than that required to be used by the Regulations in force at the date of its execution, collectors and others, officers as aforesaid, will proceed with regard to the said document in the same manner as with regard to a document written on plain paper, save and except that the penalty is to be calculated on the difference between the value of the stamp used and that required to be used by the schedules of the Regulations now in force.

4. All documents having attached to them certificates of the description prescribed in clause 2, section 2, and in section 3 of this Act, shall be held and considered in like manner as if they had been in the first instance executed on stamped paper of the value required.

5. In modification of section 7, of Regulation XII. of 1826, and section 6, of Regulation X. of 1829, be it enacted, That it shall be lawful for the Governor-general in Council at any time to direct the dispensing with, changing, or altering of the stamp or counter-stamp impression, or of the legend or other device at present borne, or that hereafter may be ordered to be borne by stamped paper issued from the office of the superintendent of stamps, due notice of such alteration being given in the Government Gazette for a period of one month previous to the issue of such paper from the stamp-office.

6. First. Upon there being a sufficient provision of water-marked paper to render the issue of other paper unnecessary, it shall be lawful for the Governor-general in Council to direct, by public notification, that all individuals having in their possession stamped paper other than that bearing the water-marked device, and which may not have any document or writing engrossed on it, shall bring the same to the collector of the district within a given period, for the purpose of having it exchanged for water-marked paper of like value with that returned.

Second. All unengrossed stamped paper which may be in the possession of individuals, and which may not be brought for the purpose of being exchanged within the period prescribed by the notification, shall be held and considered as not bearing the stamp prescribed by law, and no document executed on such paper will be received in evidence, or otherwise allowed to be pleaded or presented in any court, cutcherry, or public office whatsoever.

7. Be it further enacted, That such part of Regulation X. of 1829, as may be held to limit the appointment of superintendent of stamps to a single individual, whose office shall be held at or near to the Presidency of Fort William, shall be rescinded, and that it be lawful for the Governor-general of India in Council to nominate and appoint such officer or officers as he may deem fit, with authority to perform the duties assigned to the superintendent of stamps by the Regulation in force at such place or places as may be deemed most convenient, and to exercise their authority within such limits as may be from time to time assigned.

(signed) *S. G. Palmer,*
Acting Secretary.

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India:
Separate Cons.
10 February 1835.
No. 16.

(No. 50.)

From the Board of Customs, Salt, and Opium, to his Excellency the Right Honourable Lord *William Cavendish Bentinck*, Governor-general of India, &c. &c. &c., and Governor of the Presidency of Bengal.

Board of Customs, Salt, and Opium,
16 January 1835.

My Lord,

We have the honour to submit herewith draft of a letter addressed by us to the superintendent of stamps on the 28th of August, and of that officer's reply, dated the 28th November last. The letter is marked (A.)

2. Government are aware that in many cases considerable delay and inconvenience is experienced in the transmission of papers to the general treasury for the county stamp after they have been stamped at the superintendent's office, and that amongst the advantages contemplated on the issue of the new water-marked paper was that of being able, from the additional security it affords, to dispense with one of the two impressions at present affixed on all stamps.

3. It will be recollected that Mr. Saunders, in the 10th paragraph of a letter to our address, dated the 14th of July last, and submitted with our Report of the 8th of the following month, suggested the expediency of the new paper being retained under charge of the sub-treasurer, to be supplied to the superintendent on indent as occasion might require; and Government was pleased, in Mr. Secretary Prinsep's letter of the 11th of August, to recognize the advantages which such an arrangement presented, without involving any departure from the principle of the double check heretofore maintained by the passing of all supplies of paper through the accounts of both offices.

4. Could the measure projected have been carried into effect the treasury stamping department would have been dispensed with, and some further reduction might also have been made in the superintendent's establishment; but it appears that owing to the imperfect sorting and packing of the new paper in England, as explained in Mr. Saunders' letter now submitted, it would be requisite, on opening the several despatches, to subject each of them to a minute examination; and the expense and want of accommodation for conducting it at the general treasury, renders the scheme wholly impracticable.

5. We think also with Mr. Saunders, that it would be objectionable, for the reasons he has assigned in the 4th paragraph of his letter, if even it did not involve the loss of the double check at the treasury, that the blank paper thus carelessly packed should be placed under charge of the superintendent, whilst any portion of the press department remained in his keeping, and in the same office.

6. What Mr. Saunders now, therefore, proposes, is to receive and retain charge of the new paper himself, and in lieu of dispensing with the counter-stamp at the treasury, to get rid of the steel die impression affixed at his office, and we are not aware of any objection to such an arrangement. The saving in establishment per mensem, exclusive of the lithographic press, under any circumstances to have been given up, will be nearly the same in either case, and so long as the check at the treasury is retained and the expense and delay is no greater, it is of little importance to the public, or to Government, which of the two stamps is dispensed with now that the water-mark renders imitation almost impracticable.

7. With respect to certain documents executed in the mofussil on unstamped paper, but entitled, under particular conditions, to have a stamp affixed, the superintendent remarks as follows:

Individuals having documents executed from inadvertence or other unavoidable cause, are, under the Regulations in force, entitled to have the requisite stamps affixed to them on payment of certain penalties, and of this description only about 670 documents were sent* to be stamped during the past year, the value of the stamps on which amounted to sicca rupees 1,680. We beg to call particularly to the notice of Government the tedious forms prescribed in cases of this kind, by which a document is made to pass backwards and forwards through the hands of the collector, the commissioner, the superintendent, and the Board, before it can be stamped and finally returned to the proprietor; thus by possibility traversing, as Mr. Saunders observes, the space of a thousand miles or more, for the stamp value of the very lowest denomination. Deeming, as we do, these harassing and repeated references wholly unnecessary, we beg leave to recommend the preferable mode of dealing with such documents recommended by the superintendent.

* From the mofussil.

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8. Mr. Saunders suggests that instead of requiring such documents to be sent to the Presidency to be stamped, the collector may on their presentation at once be authorized (with or without the sanction of the commissioner, as Government sees fit, and we should say that, for public convenience, such sanction might be dispensed with) to append to the document a certificate written on paper being a stamp of the value of the duty to which the document requiring to be stamped may be liable; this certificate will state that the party has paid the prescribed penalty, and that as long as the certificate remains attached to the document, such document is to be considered duly stamped; a description of the document to be inserted in the certificate, so that it should not be available for any other paper*.

9. Should your Lordship approve such an arrangement, each collector might be supplied by us with a form of the required certificate; and for the purpose of checking the accounts, it would only be necessary that a monthly statement of the penalties levied should be furnished to the revenue accountant, that he may see that the paper issued for the certificates, and the amount of the penalties levied†, has been duly credited to the stamp department in the collector's cash accounts.

10. Adverting to the concluding part of the second paragraph of Mr. Secretary Prinsep's letter of the 11th August, the only cases that remain to be considered are those wherein papers of a particular description require to be separately dealt with; and however desirable it may be to preserve uniformity of practice, we apprehend that it is indispensable in such cases to adhere to the old plan of affixing two separate stamps on each document.

11. These cases are where individuals carry engrossed but unexecuted deeds, or plain papers, to the collector, who, having taken the amount duty, grants a certificate to that effect, and forwards it, with the papers, to the superintendent's office, where they are stamped, and then sent over to the general treasury for the counter-stamp, after which they are returned, either direct, or through the collector, to the applicants. During the past year, 3,786 papers, requiring stamps to the value of 1,130 rupees, from the mofussil, and 2,318 papers for stamps, amounting to 17,880 rupees, from the Calcutta collector, were received by the superintendent.

12. The certificate referred to in the 8th paragraph of this letter could not perhaps be attached to engrossed but unexecuted deeds, or to plain papers, as we are doubtful whether any description could be inserted in such certificate, whereby the document referred to might be hereafter clearly identified; and it being proposed to dispense with the steel die impression hitherto affixed at the stamp-office, Mr. Saunders desires to substitute for it in these particular cases a general stamp, to be kept under his personal charge, and to be used only in his presence, or in that of a covenant[illegible] officer of Government; in all other respects the process in regard to these docu[illegible]nts will be precisely what it has always been.

13. Should the teno[illegible]of the preceding suggestions be approved of, some trifling alterations will be rec[illegible]site in the mofussil and Calcutta stamp regulations, and those we would prepa[illegible] for submission to Government, in concert with the superintendent of stamps, [illegible] it is your Lordship's pleasure. The arrangements contemplated cannot be carried into effect immediately, and the necessary changes in the regulations may therefore be made without delaying any portion of the scheme.

14. It does not appear to be necessary to indent specially for new water-marked paper for the Calcutta department (that at present in use, of which there is a considerable store, has not the value inserted), as parties generally prefer to use their own paper, and the sizes of the sheets at the presidency are very numerous. When indents are made by the collector, it is proposed, where the size conforms, to furnish him with mofussil water-marked paper; and where it does not conform, to

* Including, of course, names of parties, date, subject-matter, amount covered by it, &c.

† Trust must, of course, be placed in the collector, that he will bring to credit the amount of penalties levied; but it would be a very narrow view to doubt the expediency of reposing such trust, amounting in all the mofussil collectorships to only 1,680 rupees per annum, in an officer on whose integrity amounts of such infinitely greater importance must depend.

to supply him with paper bearing the general stamp to be affixed by the superintendent, as explained in the preceding paragraph. No. 7. On Stamps.

We have, &c.
(signed) *C. D'Oyly.*
H. M. Parker.

P. S. The whole of the papers connected with the subject are herewith resubmitted as below*, for ready reference, and we solicit their return when no longer required

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ABSTRACT.

Forwarding a letter from the Superintendent of Stamps, suggesting the adoption of certain arrangements proposed by him consequent on the introduction of water-marked paper from England for all descriptions of stamps generally to the orders of Government, conveyed in Mr. Secretary Prinsep's letter of the 11th August last. Board offer their observations on the several propositions submitted by the superintendent, and point out particularly that some of them cannot be carried into effect without making certain alterations in the mofussil and Calcutta stamp regulations now in force. They however recommend the proposed arrangements for the sanction of Government.

(A.)

From *R. Saunders*, Esq. Superintendent of Stamps' Office, to *W. R. Young*, Esq. Secretary to the Board of Customs, Salt, and Opium. Not recorded.

Superintendent of Stamps' Office,
28 November 1834.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 28th of August last, with the correspondence that accompanied it.

2. Mr. Secretary Prinsep, in the second paragraph of his letter of the 11th of that month to the Board, states, that his Honor the Vice-president in Council deems deserving of attention my suggestion of placing the new water-marked paper lately received from England in the custody of the sub-treasurer, to be drawn from that officer by me by indent and receipt, whereby the double check may be preserved and the counter-stamp dispensed with; but considers that a counter-stamp may still be required for deeds brought to be stamped after execution.

When my proposal was originally submitted to the Board, I fully expected that the new water-marked paper received from England would be found to be so correctly sorted and packed, as to admit of the treasury officers, on referring to the invoices only, making over to me bundles of known values and quantities, without subjecting their contents to any minute examination; but, as reported in my address of this date, I have since found that in several instances papers of different values are mixed in the bundles, and that some of the sheets are without the water-mark, so that were the transfer made, it would be necessary either to have the paper carefully examined by Mr. Oakes's officers, and by mine previous to my granting him a receipt for the same; or, if it were sent to me in entire parcels, he would have to abide by my report on their examination.

4. The objection to the first plan is the expense and delay attendant on the double examination, and the want of accommodation which I apprehend will be found at the treasury for conducting it. If the second be adopted, the check over this office will not be complete, as my selectors might appropriate any surplus sheets found in the parcels, and by collusion with the press department get them stamped and rendered fit for circulation.

5. Under

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* Letter from Superintendent of Stamps, dated 14th July 1834.
Board's Address to Government, dated 8th August 1834.
Statement referred to in the above letter.
Letter from Secretary to Government, General Department, dated 11th August 1834.

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5. Under these circumstances it will, I think, be better that the charge of the blank water-marked paper be retained by me; that the steel-die impression now affixed at this office be dispensed with, and that all paper, as at present, be sent to the general treasury to be stamped previous to its being brought into use.

Letter from the late Board of Revenue, L. P., to the Secretary to the Government, Territorial Department, dated 22d March 1825.
Superintendent's letter to the late Board of Revenue, L. P., dated 13th May 1825.
Board's reply to ditto, dated 24th May 1825.
Superintendent's letter to the late Board of Revenue, L. P., dated 21st April 1825.
Board's reply to ditto, dated 26th April 1825.

6. On referring to the correspondence noted in the margin, the Board will perceive that the application of a lithographic device, and of manuscript numbers, to each of the sheets of one rupee value and upwards, were introduced with the view to prevent any fraudulent imitations of the stamp, of which there will be no risk when the new water-marked paper is exclusively used.

7. The expense of the lithographic establishment attached to this office, exclusive of that portion of my assistant's (Mr. Holmes) salary, debited to that department, amounts to per mensem - - - - - *Sicca Rs.* 292 – –
That of the numbering sircars, to - - - - - 96 – –
And that of the steel-die press department, to - - - 175 – –

Total *Sicca Rs.* 563 – –

And should my proposition be approved of, I will hereafter submit a revised establishment list, in which I hope that a saving nearly equal to the above will be shown.

8. With respect to the point adverted to at the conclusion of the 2d paragraph of Mr. Secretary Prinsep's letter, on which the Board request my opinion, I beg to state, that under the rules in force the following cases occur in which stamps may have to be affixed to paper other than that supplied by the state for the use of the department, and that consequently the water-marked device will not operate as a security in such cases.

1st. Individuals having documents executed from inadvertence, or from some other unavoidable causes, on unstamped paper, are, under the Regulations in force, entitled to have the requisite stamps affixed to them on the payment of certain penalties; and of this description about 670 documents were sent to be stamped during the past year; and the value of the stamps affixed amounted to sicca rupees 1,680.

9. The form observed in such cases in the mofussil is for the party to present a petition to the collector, stating the cause which led to the documents not having been originally stamped; the collector investigates the case and decides, in the first instance, the amount of penalty incurred by the omission, and, on completing the investigation, transmits his proceedings, with the document, to the commissioner of his division, who confirms or modifies the orders passed, and returns the document to the collector, who then levies the amount of penalty due from the party, and attaches to it a certificate, and forwards it to this office, when the case is again gone into, and, if it appears that the amount of duty has been improperly fixed by the mofussil authorities, a reference is made by me to the Board; after which the document is first stamped in his office, then forwarded to the treasury, and on its being received back from thence, is returned to the collector, with a copy of any correspondence that may have passed between this office and the Board on the subject; and this course is followed, though the party applying to have his document stamped may be a thousand miles distant from the Presidency, and the value of the stamp affixed may not exceed one anna.

10. I am clearly of opinion that some of these forms may be dispensed with without incurring any risk of loss of revenue at all equivalent to the expense and trouble caused by their observance; and I would propose that instead of sending documents to the Presidency to be stamped, collectors be authorized, either with or without obtaining the orders of the commissioner, as Government may think fit, to affix to the document a certificate, written on paper bearing a stamp of the value of the duty to which it may be liable, to the effect that the party has paid the penalty prescribed, and that the document, as long as the certificate remains attached to it, is to be considered to all intents and purposes duly stamped. A description of the document must be inserted in the certificate, so that it will not be available for any other paper.

11. The

11. The collector will furnish this office and that of the revenue accountant, as he now does, with a monthly statement of the penalties thus levied, and, if necessary, it may be countersigned by the commissioner; and the officers of account will of course see that credit is given to the stamp department in the collector's treasury account for the issue of the paper on which the certificate is written, and for the amount of penalties levied.

12. The other case is, where individuals bring either engrossed but unexecuted documents, or plain papers, to have stamps affixed to them. Of this description, 3,786 papers, requiring stamps to the value of 1,130 rupees, were received from the mofussil; and 2,318 for stamps of 17,880 rupees value, from the collector of Calcutta stamps during the past year. The form now observed is, for the parties to apply personally or by letter to the collector, who, having received the amount of the duty, grants a certificate to this effect, and forwards it, with the papers, to this office, when they are stamped and sent on to the treasury; after which they are countersigned here, as directed by clause 3, section 11, of Regulation X. of 1829, and clause 3, section 7, of the Calcutta Regulation, as the case may be, and then returned either to the parties direct, or to the collector.

13. The sort of certificate referred to in the 5th para. cannot be attached to these documents or to plain paper, as no description can be inserted in it whereby the document referred to in it can be identified, but I propose to attach to such papers or unexecuted documents a general stamp, to be ordinarily retained under my personal charge, and to be used in the presence only of myself or of one of my covenanted assistants, or some other covenanted officer. The papers will then be sent to be counter-stamped at the general treasury, and will afterwards be endorsed and dated as described in para. 12 of this address.

14. New water-marked paper for the Calcutta Department has not been indented for, and that in use, of which there is a considerable store, has not the value inserted. As the sizes of sheets required by individuals at the Presidency are very numerous, and as persons in Calcutta very generally prefer using their own paper, it will not, I think, be worth while to indent for any sizes specially for Calcutta; such of the mofussil sizes as conform to those required here may be used for Calcutta stamps; and I propose that paper of other sizes, when indented for by the collector, be stamped and authenticated by one of the European assistants attached to this office, in the manner prescribed for engrossed but unexecuted documents or plain paper brought by individuals to be stamped.

I have, &c.
(signed) *R. Saunders*,
Superintendent.

ABSTRACT.

IN reply to Board's letter of the 28th of August last, adverts to his former proposal to place the new water-marked paper under charge of the sub-treasurer, and reports that, under existing circumstances and for the reasons stated, that proposal cannot be carried into effect.

Recommends that the paper be stored at his office, and that the affixing the stamp office steel-die impression, the lithographic device, and the manuscript number, be in future dispensed with, and that this paper, like all other paper hitherto used, be sent to the general treasury to be counter-stamped previous to issue.

With advertence to the concluding part of the second paragraph of Mr. Secretary Prinsep's letter of the 11th of August last, states the forms observed in stamping executed documents, when presented by individuals for that purpose. Considers that some of these forms may be dispensed with without risk of loss of revenue, and recommends that in future a certificate be written on stamped paper by collectors, and substituted for the stamp and counter-stamp at present used in giving validity to such documents.

Reports the course followed when engrossed but unexecuted documents and plain papers are brought to be stamped, and recommends that in lieu of the steel-die impression hitherto used in this office, a general stamp be affixed to this

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description of papers; after which that they be sent to the general treasury and counter-stamped, and then examined, dated, and attested, as prescribed in clause 3, section 11, Regulation X. of 1829, and clause 3, section 7, of the Calcutta Regulation.

Reports not having in store paper (showing the value in water-mark) for all the sizes used in Calcutta; proposes, therefore, that the six sizes of mofussil paper be used for Calcutta purposes when it suits the convenience of parties to take them, and that any other sizes of paper required to be prepared for Calcutta be stamped and authenticated in the manner proposed for unexecuted documents and plain paper.

(Copy.)

(signed) *J. P. Grant*, Officiating Secretary.

India: Separate Cons. 10 February 1835. No. 17.

From *H. T. Prinsep*, Esq. Secretary to the Government in the General Department, to the Board of Customs, Salt, and Opium.

Gentlemen, Fort William, 10 February 1835.

1. I AM directed to acknowledge the receipt of your letter dated the 16th ultimo, with its enclosures, and in reply to state that the Right honourable the Governor-general in Council entirely approves the Board's suggestion for dispensing with the stamp of the superintendent's office to water-mark paper bearing the value in the water-mark, instead of discontinuing that of the treasury, which was heretofore proposed. All the advantage of the double check of account will thus equally be secured, and the sorting and examining of the paper will be duly made in the proper office and department.

2. His Lordship in Council also approves highly of the suggestion, which appears to have originated with Mr. R. Saunders, of substituting for the transmission from the interior of deeds admitted by commissioners and collectors to be stamped, the pasting or otherwise joining to them a certificate written upon paper of the full amount leviable under the existing rules, due precautions being of course taken to describe the deed so rendered valid in the certificate, so as to prevent the same certificate being used for a second or for any other deed.

3. This plan seemed to his Lordship in Council to afford complete protection to the revenue, at the same time that it removes a great inconvenience incident to the risks and delays of transmission from the public and persons upon whom it is levied.

4. The unexecuted deeds brought to be stamped before signature must, it would seem, still be carried through the same forms as at present.

5. The Governor-general in Council, approving of all the Board's recommendations on the above subjects, directs me to request that the Board will prepare a draft of enactment to give effect to them, for it seems to him that a legislative Act will be indispensable for the purpose.

6. The original documents submitted with your letter are herewith returned as requested.

I have, &c.

(signed) *H. T. Prinsep*,
Secretary to the Government.

India: Separate Cons. 21 August 1834. No. 10.

From the Board of Customs, Salt, and Opium, to the Honourable Sir *C. T. Metcalfe*, Bart., Vice-president in Council.

Board of Customs, Salt, and Opium,

Honourable Sir, 8 August 1834.

WE have the honour to submit herewith a letter, dated the 14th ultimo, from the superintendent of stamps, with the several papers to which it adverts.

2. Mr. R. Saunders' report is so explicit and full as to require but few observations from us.

3. We are wholly at a loss to account for the very considerable difference in the cost of the water-marked paper sent out by the Honourable the Court of Directors, as explained in the sixth paragraph of Mr. Saunders' address. That officer's calculations

culations in 1830 appeared founded on sufficient data, as shown in the second paragraph of this present letter, but they were of course completely vitiated by the unexpected price (independent of the cost for the moulds) at which the water-marked paper forwarded from England was invoiced, and which enhanced the expense beyond that contemplated more than five rupees per ream. We trust that the Honourable Court will, at the instance of Government, be pleased to institute inquiries on this point.

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4. It will be perceived that a material reduction has occurred in the prices generally of paper procurable in this country since the arrangement for supplying the stamp department with water-marked paper* from England, of all values, was suggested; and under these circumstances, the superintendent is doubtful as to how far it might be advisable to renew our application for the whole supply from England, unless, on inquiry, the Home Government should find a suitable paper for the anna values to be procurable at a considerably cheaper rate. On this point we beg to refer to the eighth paragraph of the superintendent's address.

* By this we mean a water-mark showing the value of the stamp.

5. For our own parts, although deeply impressed with the urgent necessity for economy in every branch of the public service, we should regret to see anything short of a serious increase of expense considered a valid reason for the abandonment of a measure promising to render altogether impracticable those forgeries and alterations in stamps of any description, which have been alike hurtful to the department and injurious to the public. If, therefore, the Honourable Court can obtain a description of paper for the anna values not more expensive, or very little more expensive, than the country paper we are now using, we still hope that they will be pleased to approve of the suggestion for having all other stamps prepared with the water-mark showing their value, as well as those of the rupee values, and we think that in this case the cost of the moulds, which we believe will last when once prepared a considerable time, would be well bestowed.

We might have moulds used with the country paper, but we do not think it could be done with safety, unless Government were to establish a paper manufactory, which would be a costly experiment.

6. In the event of our whole supply of stamp paper having the value in its water-mark, we think that the arrangements adverted to in the 10th and 11th paragraphs of Mr. Saunders' letter might be carried into effect with advantage to the public service and at a saving of expense†. Parties in Calcutta, who bring papers to be stamped, complain greatly of the delay involved by the necessity of having them stamped both at the superintendent's office and at the general treasury.

† The stamping department in the general treasury might be reduced.

7. It is also to be kept in mind, that the expense incurred in the authentication of stamps, which process, we fear, is but a trifling impediment to forgery, would cease with the employment of 12 and 8 anna stamps, having the value expressed in the water-mark.

8. Since receiving Mr. Saunders' letter, herewith submitted, we have begged him to make out a statement showing the probable difference in expense, in the event of English water-marked paper exhibiting value being substituted, in the anna values, for the country paper now in use.

9. From this statement, which we have the honour to submit, it will be seen, that taking the English water-marked paper at the high rate of sicca rupees 19. 0. 6. per ream, the additional expense of using that water-marked paper for 8 and 12 anna values, in preference to the authenticated country paper for three years, would have amounted to sicca rupees 635. 15. 4.

1832–33	-	300	10 4
1833–34	-	1,136	11 –
		1,437	5 4
Deduct, Saving in 1831–32	-	801	6 –
	Rs.	635	15 4

10. The use of 1, 2, and 4 anna papers would have been more expensive, and it will be seen from the same statement, that if water-marked had been substituted for country paper in those values during the past three years, the additional charge would have amounted on an average to sicca rupees 7,647. 1. 10. per annum. In 1833–34 it would have amounted to sicca rupees 10,227. 2.; but this is owing, on the one hand, to the material fall in the price of country paper, and on the other, to the unexpected rate at which the English water-marked paper was invoiced.

11. We beg permission, however, to repeat our opinion, that if paper is obtainable in England of a moderately good quality, such as the French paper sent in with Mr. Saunders' letter, and can be invoiced at a price not greater than, say eight rupees per ream, it would be highly desirable to have the 1, 2, and 4 anna value on water-marked paper showing those values, as well as the 8 and 12 anna values.

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12. We have at this moment before us a case of stamp forgeries, or rather alterations, which shows how easily those can be effected with sufficient accuracy to deceive the eye of an ignorant person. Water-marked paper showing the value of the stamp, of course renders this species of fraud impracticable. We submit Mr. Commissioner H. Middleton's report on this subject, dated 17th ultimo. The alterations are very clumsy, and the lithographed endorsements showing the amount of plaint for which the stamp is suitable, should have led to their immediate detection; we beg the return of these papers as soon as convenient, that we may proceed in our inquiries concerning the case, which we shall hereafter have the honour to submit to Government, if necessary.

13. We respectfully beg that the Honourable Court's attention may be called to the apparent oversight adverted to by the 9th paragraph of the superintendent's address. The superintendent's letter indenting for the stamps referred to, must, we imagine, have crossed the Honourable Court's letter, which decided that the supply of water-marked paper for the anna values was inexpedient, on its way out. But as Mr. Saunders only requested that the paper indented for by his supplementary indent of the 4th of August 1832, might be sent to Bengal in the event of the Honourable Court agreeing to the proposition submitted to them in 1830, for supplying water-marked papers for all descriptions of stamps, we conceive that some misapprehension must have occurred at home.

14. We shall sanction the issue of the new water-marked paper from the 1st proximo, as proposed by Mr. Saunders.

15. We solicit the return of such of the original papers which accompany this, as are not required to be sent home to the Honourable the Court of Directors.

We have, &c.

(signed) *C. D'Oyly.*
H. M. Parker.

Abstract.

Forwarding a detailed report from the superintendent of stamps relative to the supply of water-marked paper from England, and proposing that if the measure is not attended with much increase of expense, that English water-marked paper may be brought into general use for all the smaller values of stamps, in lieu of country paper. Board show the advantages to be derived from the adoption of the arrangement proposed, and recommend it for the consideration of Government and the Honourable the Court of Directors.

India: Separate Cons. 11 August 1834. No. 11.

From *H. T. Prinsep*, Esq. Secretary to the Government in the General Department, to the Board of Customs, Salt, and Opium.

Gentlemen, Council Chamber, 11 August 1834.

1. I am directed by the Vice-president in Council to acknowledge the receipt of your letter, dated the 8th instant, with its enclosures, relative to the supply of water-marked paper from England, and in reply to state that the disappointment of the superintendent of stamps at the high invoice price of the water-marked paper sent out from England under his former indent, will be brought to the notice of the Honourable Court, with the expression of a hope that means will be found of obtaining the article at a cheaper rate hereafter.

2. The Vice-president in Council concurs with the Board in attaching importance to continuing the use of water-marked paper bearing in the water-mark the same value as the stamp, notwithstanding the increase of charge for such paper, on account of the security against forgery afforded by it; and amongst the advantages it offers, is that pointed out in the suggestion of Mr. Saunders, viz. that by placing the paper in the custody of the sub-treasurer, to be drawn from that officer by indent and receipt, the double check now established may be preserved, and the counter-stamp dispensed with. This suggestion is highly deserving of attention, but it is also to be considered whether the counter-stamp may not still be required for deeds brought to be stamped after execution, lest these be not otherwise

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On Stamps.

wise passed through the accounts of both offices, so that the two should correspond.

3. The advantage of enabling the Government to dispense with the authenticator's signature has heretofore been adverted to, and for the reasons above referred to, the Vice-president in Council thinks it will be very desirable to extend the use of this description of paper to the papers of low denomination, viz. those bearing anna stamps, so as to place the whole on the same footing, and, as shown by the Board, the difference of expense even under this extension will not be very considerable. The superintendent of stamps may therefore make out his indents upon the assumption that the water-mark shall be applied to all stamps, and the matter will be explained to the Honourable the Court of Directors at the time of forwarding them. The circumstances which attended the forwarding of the indents of the past year, as explained by the Board and superintendent, will likewise be brought under the notice of the Court.

4. The original papers which accompanied your letter, are herewith returned.

I have, &c.
(signed) *H. T. Prinsep*,
Secretary to the Government.

(No. 40.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, in the Legislative Department, to *F. Millett*, Esq. Secretary to the Indian Law Commissioners.

Legis. Cons.
26 October 1835.
No. 5.

Sir, Council Chamber, 26 October 1835.

I AM desired by the Honourable the Governor-general of India in Council to transmit to you, for submission to the Indian Law Commissioners, the original papers noted in the margin, and to request that the Commission will, at their early convenience, frame the draft of an Act for amending the existing rules relative to stamps, in the mode suggested in the accompanying correspondence.

Letter from the Board of Customs, Salt, and Opium, of 8th August 1834.
Ditto to ditto, dated 11th August 1834.
Letter from the Superintendent of Stamps, dated 28th November 1834.
Letter from the Board of Customs, Salt, and Opium, dated 16th January 1835.
Ditto to ditto, dated 10th February 1835.
Ditto from ditto, dated 1st September 1835, with enclosure.

2. The Governor-general in Council is of opinion, that all documents which would not be received in evidence in the interior of the country, unless written on stamp paper, should likewise be held to be of no force in the Supreme Court of Judicature, unless written on the prescribed stamp; and I am desired to request that the Commission will provide for this object in the enactment which they have now been requested to prepare. The Commission is, no doubt, aware that the rules for the collection of the stamp revenue which have been hitherto in force with this view at the presidency of Fort William, have been in a great degree inoperative.

3. If the object could be accomplished without much delay, I am directed to observe that the present would seem a suitable opportunity for consolidating the whole of the stamp laws of the Bengal and Agra Presidencies.

4. The governments of Fort St. George and Bombay will be requested to state whether they are aware of any objection to the schedule of stamp duties as already existing on this side of India, being made applicable to those presidencies, and whether the rules which are in force for the collection of the stamp duties in the interior, should not be made equally operative within the jurisdiction of the Supreme Court.

5. You are requested to return the original papers when they are no longer required by the Commission.

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

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Legis. Cons.
26 October 1835.
No. 6.

(No. 30.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India in the Legislative Department, to *T. H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George.

(No. 31.)

To *C. Norris*, Esq. Chief Secretary to the Government of Bombay.

Sir, Council Chamber, 26 October 1835.

I AM desired by the Governor-general of India in Council to transmit to you, for the consideration of the Right honourable the Governor in Council, the accompanying copies of a letter this day written to the Secretary to the Indian Law Commissioners, and of the correspondence referred to in the margin of that letter.

2. It will be perceived from those documents that it is in the contemplation of the Supreme Government to amend the existing rules relative to the stamp revenue; and I am directed to request that the Right honourable the Governor in Council will be pleased to state whether he is aware of any objection to the schedules of stamp duties, as already existing on this side of India, being made applicable to the Presidency of Fort St. George, Bombay; and whether the rules which are in force for the collection of the stamp duties in the interior should not be made equally operative within the jurisdiction of the Supreme Court.

I have, &c.

(signed) *W. H. Macnaghten*,
Secretary to the Government.

(No. 319.)

Legis. Cons.
6 March 1837.
No. 14.

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *W. H. Macnaghten*, Esq. Secretary to the Government of India.

Sir, Fort St. George, 18 March 1836.

Revenue Department.

Dated respectively 30 Nov. 1835, No. 187; and 22 Feb. 1836, No. 87.

WITH reference to your letter of the 26th October 1835, No. 30, I am directed to transmit to you, for submission to the Right honourable the Governor-general of India in Council, the accompanying copies of a letter from the Register to the Sudder Adawlut, and of an extract from the proceedings of the Board of Revenue, on the subject of making applicable to this presidency the schedule of stamp duties already existing under the Bengal Presidency, and of making equally operative within the jurisdiction of the Supreme Court the rules in force for the collection of stamp duties in the interior.

2. From the papers now submitted the Supreme Government will observe that there are important objections to the implicit adoption, under this presidency, of the Bengal schedule of stamp duties; but the Governor in Council is not aware of any objection to the rules in force for the collection of the stamp duties in the provinces under this presidency being made operative within the jurisdiction of the Supreme Court; on the contrary, he is inclined to think that such a measure would be nothing more than just and proper.

3. I am further directed to take this opportunity to acquaint you, that the progressive declension in the stamp revenue under this presidency having some time since attracted attention, an investigation was ordered into the causes of the reduction, with a view to prevent further decrease, and eventually to raise the revenue to its former state. The result of the inquiry by the superintendent of stamps has just been laid before Government; and I am directed to transmit

Dated 22 Feb. 1836, No 88.

a copy of that officer's report, together with a copy of the extract from the proceedings of the Board of Revenue with which it was received, for the information of the Supreme Government, and to intimate that, pending the decision of the Right honourable the Governor-general of India in Council on the subject of this communication, the Governor in Council proposes to defer the adoption of measures for the improvement of this source of revenue under this presidency.

I have, &c.

(signed) *H. Chamier*, Chief Secretary.

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On Stamps.

(No. 187.)

From *W. Douglas*, Esq. Register Sudder Adawlut, to the Chief Secretary to Government.

Sudder Adawlut.
Legis. Cons.
6 March 1837,
No. 15.

Sudder Adawlut Register's Office,
30 November 1835.

Sir,

I AM directed by the Judges of the Court of Sudder Adawlut to acknowledge the receipt of the extract from the Minutes of Consultation, dated the 17th inst., accompanied by copies of certain papers received from the Supreme Government, connected with a proposed enactment by the Law Commission for amending the existing rules relative to stamps, for the consideration and report of this Court.

2. The opinion of the Judges being called for on the following points, viz. whether there is any objection to the schedule of stamp duties, as already existing "in the Bengal Presidency," being made applicable to the Presidency of Fort St. George, and whether the rules which are in force for the collection of the stamp duties in the interior should be made equally operative within the jurisdiction of the Supreme Court, I am desired by them to state that, although the adoption of the Bengal stamp duties at this presidency would occasion a material change, they are of opinion that, with a few modifications, they might be introduced here with advantage, and particularly adverting to section 8, Regulation V. of 1831, that the use of stamp paper for the plaint in the moonsiff's courts, in lieu of the institution fee, would be a very desirable change.

3. The Judges perceive that, in paragraph 7, Schedule (A.) of Regulation X. of 1829, the value of the stamp on bonds is considerably higher than obtains under the rules in force at this presidency, but yet not to an extent that is objectionable.

4. The value of the stamp on petitions of plaint and appeal, in paragraph 8, Schedule (B.) of the same Regulation, corresponds very much, except as regards suits for land, with the amount required under the rules which exist here.

5. In paragraph 1 of Schedule (B.) of the same Regulation, it is observed that bail bonds and security bonds are "to be charged as petitions when furnished and filed under special order of a court of justice, civil or criminal, or of any officer exercising judicial powers." It appears to the Sudder Adawlut, however, that a charge of this nature upon bail bonds and security bonds, for the good behaviour and appearance of persons in criminal cases, would be objectionable, the difficulties experienced by persons in producing security being already so great as to render the requisition of it too frequently equivalent to a sentence of imprisonment for the period specified, and in the event of stamp paper being requisite on these occasions, their difficulties would be injuriously increased.

6. To Schedule (B.) paragraph 7, another objection exists in the opinion of the Judges. They think it would be very inexpedient to throw any obstacle in the way of petitioning the criminal courts or the magistracy; and the imposition of a duty would doubtless deter, in many instances, the lower classes, who are the most likely to be aggrieved, from bringing forward their complaints.

7. In conclusion, I am directed to add, that the Judges are not aware of any objection to "the rules in force for the collection of the stamp duties in the interior being made equally operative within the jurisdiction of the Supreme Court."

(signed) *W. Douglas*, Register.

(No. 87.)

EXTRACT from the Proceedings of the Board of Revenue; dated 22 February 1836.

Rev. Dep.

Para. 1. THE Board of Revenue proceed to take into consideration the question referred to them by the Minute of Consultation in the Revenue Department, under date the 17th November last (No. 1418).

2. The questions to be considered are those stated in Mr. Secretary Macnaghten's letter, dated 26th October 1835, viz. first, whether there is any objection to the schedule of stamp duties, as already existing in the provinces under the Government of Fort William and Agra, being made applicable to the presidency of Fort St. George; and, second, whether the rules which are in force for the collection

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collection of the stamp duties in the interior should not be made equally operative within the jurisdiction of the Supreme Court.

3. With respect to the second question, the Board understand, from the 2d paragraph of Mr. Secretary Macnaghten's letter of the 26th October to the Law Commissioners, that the intention of the Supreme Government is, that "all documents which would not be received in evidence in the interior of the country, unless written on stamp paper, should likewise be held to be of no force in the Supreme Court of Judicature, unless written on the prescribed stamp." On this understanding of the question, the Board have no hesitation in expressing their opinion that it is just and proper that the duties chargeable in the provinces "on instruments of conveyance, contract, obligation or security for money, and on deeds in general," should be likewise chargeable within the limits of the jurisdiction of the Supreme Court.

4. The schedule referred to in the first question, in respect to instruments and deeds in general, the Board understand to be the Schedule (A.) appended to Regulation X. of 1829, of the Bengal Code. On examining this schedule, the first observation that occurs to the Board is, that by adopting it under this presidency, the exemption from duty of the instruments of sums not exceeding 64 rupees, allowed by Regulation II. of 1825, will be withdrawn. The Board are inclined to think that the present exemption is unnecessarily large, and that it might be limited with propriety to 20 rupees, which they apprehend would embrace the chief part of the transactions of the very poor, to whom it seems advisable to confine the indulgence; but they are not prepared to recommend that the stamp duties be extended to instruments for sums of money of less amount.

5. By our Stamp Regulation the rates of duty are the same for bonds, bills of exchange, promissory notes, receipts, bills of sale, mortgages, contracts, &c.; whereas by Schedule (A.) of Regulation X. of 1829, the rates vary according to the nature of the instrument. By the latter, bonds, promissory notes, and bills of exchange of dates exceeding one year, are classed together, and subject to the same rates; promissory notes and bills of exchange, of dates not exceeding one year, are subject to more favourable rates, differing again as they are of dates exceeding or not exceeding three months. The duties on receipts are distinct, as are also the duties on conveyances and on leases.

6. On comparing the Tables in Schedule (A.) with the general Table in Regulation XIII. of 1816 of the code of this Presidency, it appears that by the adoption of the former upon bonds, promissory notes, and bills of exchange, of dates exceeding one year, for sums under 64 rupees, now exempt, duties would be imposed varying from 2 to 8 annas; for sums from 64 rupees to 125 rupees the present duty would be doubled; for sums between 300 and 500, it would be quadrupled; from 500 to 1,000 trebled; from 1,000 to 2,000, increased from 8 to 20; from 5,000 to 10,000 doubled; from 1,000 to 2,000, increased from 32 to 40; from 20,000 to 50,000, increased from 50 to 64; and that above 50,000 the rates would be decreased, the rate for 1,00,000 being 80 instead of 100, and for 1,50,000, 100 instead of 150; but for sums above 2,00,000, the rates are higher by Schedule (A.). Thus for the great majority of pecuniary transactions in which bonds, &c. are executed, the duty would be increased from 100 to 400 per cent. by the adoption of that Schedule.

Rs. a.	
Under -	25 - 2
From 25 to 50 -	4
— 50 to 64 -	8

7. With respect, however, to promissory notes and bills of exchange, of dates not exceeding a year, for sums above 500 rupees, the rates in Schedule (A.) are more favourable than ours, and the advantage is greater as the sums increase in amount. For instance, from 1,000 rupees to 1,600, by Schedule (A.), the duty is 2 rupees, or half the amount prescribed by our Regulation; for 1,00,000 rupees, the duty by Schedule (A.) is 20 rupees, while by our Regulation it is 100 rupees. Below 500 rupees, for dates exceeding three months, the rates in Schedule (A.) are not as favourable as ours.

8. With respect to receipts and discharges for money, the rates in Schedule (A.) are greatly more favourable than ours for sums exceeding 64 rupees; viz.

By Schedule (A.)		By our Regulation.	
100 rupees - -	2 annas.	100 rupees - -	4 annas.
500 — - -	8 —	500 — - -	1 rupee.
2,000 — - -	1 rupee.	2,000 — - -	4 —

By

By Schedule (A.) the highest rate of duty is 4 rupees for any sum exceeding 8,000 rupees, while by our Regulation the rate of duty goes on increasing till it reaches 150 rupees, which is charged for sums exceeding 1,00,000 rupees.

9. The Board are of opinion that it is not just or expedient to tax receipts and discharges for money and promissory notes, and bills of exchange of short dates, in the same rates as bonds and notes extending beyond the term of a year, and they therefore think it desirable that, in respect to the former, the rates of Schedule (A.) should be adopted, with the limitation proposed above. If this indulgence were allowed, the rate upon bonds and promissory notes, &c. of dates extending beyond a year might be increased; but the Board are not prepared to recommend so great an increase as would result from the adoption of Schedule (A.)

10. By Schedule (A.), the rates of duty on conveyances, bills of sale, &c. are considerably higher than those prescribed by our Regulation up to the sum of 50,000 rupees; from 50,000 to 100,000 the duty is the same. By our Regulation, 150 rupees is the maximum for any sum above 1,00,000; but by Schedule (A.) there is an addition of 100 rupees for every further lac above 2,00,000.

11. The rates of Schedule (A.) are also much heavier than ours upon leases, up to 10,000 rupees, when the term does not exceed a year, and up to 50,000 rupees when it exceeds a year; above 20,000 rupees in the former case, and above 50,000 rupees in the latter, our rates exceed those of Schedule (A.).

12. The above observations will be sufficient to show that there are important objections to adopting implicitly the Bengal schedule of stamp duties on instruments and deeds, inasmuch as such an addition to the existing rate of tax could not fail materially to affect the value of all property which might be brought within its influence.

13. By Regulation X. of 1829, deeds and instruments executed on unstamped paper, and not presented to be stamped within three months from the date of execution, are not entitled to be stamped, except upon its being shown to the satisfaction of the controlling Board that by refusing to affix the stamp the party will be subjected to great and unmerited hardship or injustice; when it is permitted to be stamped, which is not allowable if suspicion of evasion attach, the fine is discretional, but is not to be less than ten times the value of the stamp. By our Regulation II. of 1825, instruments on unstamped paper are admitted in evidence without restriction, on payment of ten times the amount of the stamp duty. When this provision was made, it was assumed that the rule which previously obtained, by which instruments not written on stamped paper were rendered void, was not required for the protection of the revenue. But it has lately been represented to the Board that a main cause for the falling off in the stamp revenue is to be found in the above provision, which in a great measure renders the enactment contained in section 11, Regulation XIII. of 1816, ineffectual, the practice being to execute upon stamped paper only such instruments as the parties expect will be brought into a court of judicature, while, with the intention of evading the duty, the rest are executed upon unstamped paper, it being always open to the party interested to pay the penalty in the last resort, if need be, to make the instrument valid in a court. It is stated that the amount of penalties recovered on instruments which it is necessary to bring into action in the courts bears but a small proportion to the amount of duty lost by parties executing instruments upon unstamped paper, which are required by the above section to be executed upon stamped paper. To afford the necessary protection to the revenue, it has been proposed to adopt the provisions of section 14, Regulation X. of 1829, of the Bengal Code, and the Board were disposed to recommend the proposition to the favourable consideration of Government. But on reference to the draft of Regulation submitted to the Supreme Government by the Board of Customs, &c. at Calcutta, it would seem to be intended to modify the duties contained therein, and to give to parties the privilege of rendering unstamped documents equally valid with stamped ones, on payment of a penalty, without restriction as to time, or question as to the cause of the instrument not having been executed on stamped paper in the first instance.

Minute of Consultation, 11 Feb. 1825.

14. Referring to Schedule (B.) of duties on law papers appended to Bengal Regulation X. of 1829, the Board observe that the institution fees on suits are

* Except in suits from 25,000 to 50,000, in which the fee by the Bengal Regulation is 700 rupees; by the Madras, 750 rupees.

the same* as are prescribed by our Regulation XIII. of 1816. But on suits for lands, the value is computed upon principles different from those prescribed by our Regulations. The stamp duties on pleadings, exhibits, razeenamahs, motions, petitions, moktearnamahs, vakalutnamahs, copies of deeds and proceedings, &c. appear to be the same as prescribed for our courts, except that by the Bengal schedule the duties are the same for the courts of both Registers and Sudder Ameens, whereas by our Regulation they are less in the courts of Sudder Ameens than in those of Registers. But by the Bengal schedule, exemption from duty is allowed on suits involving an amount not exceeding 150 rupees, which does not appear to be allowed by our Regulations.

15. In Bengal, district moonsiffs have jurisdiction to the extent of 300 rupees only, but under this presidency they have jurisdiction to the extent of 1,000 rupees. In Bengal, the institution fee on suits before moonsiffs is regulated by a different scale from that which is observed here: under both presidencies, the pleadings in suits before those courts are exempted from duty; but considering the large extent of the moonsiff's jurisdiction under this presidency, it seems to be very questionable whether this exemption should be continued at all, at any rate, beyond the limit of the jurisdiction of the moonsiffs in Bengal. The practical effect of the law as it now stands must be to exempt the judicial proceedings, in by far the greater part of the original jurisdiction under this presidency, from any duty but that upon the institution of suits.

16. By the Bengal Schedule (B.) petitions to the Board of Revenue and to collectors, also to magistrates and the superior criminal courts (with certain exceptions), are required to be written upon stamped paper; the same was prescribed with respect to petitions to the Board of Revenue by our Regulation XIII. of 1816; but Regulation II. of 1825 directed that such petitions should be received on unstamped paper, and the Board, though they consider the privilege to be much abused, do not think it advisable to withdraw it. They are of opinion that petitions to collectors, and also to magistrates, and to the criminal courts, should be received generally, as at present, on unstamped paper.

See Sec. 9, Reg. II. of 1822.

17. The Board have not noticed the rowannah stamps in these proceedings, because there are none of the same nature in Schedule (A.) of the Bengal Regulation. The propriety of continuing the rowannah stamps they presume will be considered by the Committee on the Customs of India.

18. Ordered, that a copy of these proceedings be transmitted to Government.

(True extract.)

(signed) *A. P. Onslow*, Secretary.

Rev. Dep.

(No. 88.)

Legis. Cons. 6 March 1837. No. 16.

EXTRACT from the Proceedings of the Board of Revenue, dated 22 February 1836.

READ the following letter from the superintendent of stamps:

(Here enter 13, in Consultations 27th July 1835, No. 1505.)

Para. 1. Ordered, that the following letter be forwarded for the information of Government, with reference to the Board's proceedings, dated the 8th and 28th instant respectively.

2. It does not appear to the Board to be necessary to make any additional observations on the Stamp Regulation, with reference to the letter now submitted, the subject having been already fully discussed in the proceedings above alluded to.

3. Adverting to the remarks in paragraph 14 of this letter, the Board observe that transfer and mortgages of real property are already subject to the stamp duty. On the subject of a general registry of deeds affecting real property, the Board will record their sentiments separately.

4. The matter referred to in paragraph 15 has been under the consideration of the Board, and measures have been taken to recover the deficiency. When a final report is received, the whole will be laid before Government. It is the order of the Board that the head sheristadar shall have control over every department of the revenue cutcherry, including of course the stamp department; but it seems to be

Circular, 25 August 1828.

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On Stamps.

be proper to inquire whether the order is generally observed with respect to stamps. Resolved accordingly, that the collectors be requested to report on this point. It is a great irregularity to permit the stamps to be kept anywhere but in an apartment of the cutcherry, or in some public office, which the Board presume is commonly the case. It is desirable, however, to ascertain whether there are any exceptions. Ordered, therefore, that a report be called for from the collectors.

5. Resolved that the suggestion in the 16th para. be referred for the consideration and reports of the collectors generally.

(True extract.)

(signed) *A. P. Onslow*, Secretary.

From *A. D. Campbell*, Esq., Superintendent of Stamps, to the President and Members of the Board of Revenue.

Fort St. George, General Stamp Office,
13 July 1835.

Gentlemen,

With reference to the Minutes of Council, under date the 17th March last, I have the honour to enclose, for the information of your Board, and of the Government, the enclosed four statements explanatory of the state of revenue from stamps for the last 10 years, or from fusly 1234 to fusly 1243, inclusive.

N.B.—The accounts for fusly 1244 are not yet received; it closed yesterday only.

The first shows the total stamp revenue realized during these 10 years, in each of the provinces respectively, distinguishing the several descriptions of stamps in each province producing it.

The second shows the same revenue during that period, classed under the totals produced throughout our territories by each of these descriptions of stamps respectively.

The third exhibits the difference between the revenue for the last year, fusly 1243, and the highest revenue realized during any one of those 10 years.

This last account shows that, within the last 10 years, in 19 districts the present revenue from stamps has fallen off in the large sum of *Rs.* 1,77,907. 2*a.* 9*p.* In two other districts an increase of *Rs.* 3,597. 8*a.* has taken place, exhibiting on the whole a defalcation of *Rs.* 1,74 309. 10*a.* 9*p.* per annum below the highest revenue ever realized.

Having traced this decrease of revenue to its origin in each province, under each description of stamps respectively producing it, I communicated it for inquiry and report to the several collectors, in a circular communication, of which also a copy is enclosed.

The original replies received by me from the different collectors are submitted, enclosed, and contain in detail the sentiments of the local officers on this subject.

The fourth statement is one called for on the 6th May last, by the committee for the revision of the customs under the Supreme Government, and exhibits in detail the stamp revenue during the same period, realized from the land and sea customs rowannahs conjointly, distinguishing, in detail, the sums produced by each separate class of rowannahs, from that for one anna to that for 20 rupees each.

Referring to these statements for detailed information, and to the collector's reports for particulars, few remarks from me are requisite.

Of the total revenue derived from stamps for the last year, fusly 1243, to the amount of 3,80,155 rupees, no less a sum than *Rs.* 1,64,736. 3*a.* was realized from custom rowannahs, leaving only 2,15,419 rupees realized from other descriptions of stamps.

	Rs.	*a.*
Land -	1,39,203	2
Sea -	25,533	1
	1,64,736	3

Independently of the late bad seasons, which have so universally affected the resources of all but our western provinces, and diminished both money transactions and law proceedings amongst the people, the causes which have operated to reduce the revenue from these last descriptions of stamps may be traced to the

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legislative act of this Government in Regulation II. of 1825, under which were exempted from stamp duty,

1st. All instruments under 64 rupees.

2d. All wills.

3d. All petitions to the revenue Board.

4th. All deeds whatever under payment of a penalty of ten times the stamp duty, and to the subsequent transfer to the moonsiffs' courts (where law pleadings are exempt from stamp duty) of suits as far as 1,000 rupees, the pleadings in which, before the European courts, were liable to the stamp tax.

In anticipating the Bengal committee, by suggesting the abolition of the stamp duty on custom rowannahs, my circular letter of the 9th March alluded to a tax on testamentary bequests, and the rendering legal by law devise by will amongst the Hindoos, rather in order to induce preferable suggestions from the collectors respecting a substitute for the large revenue derived from the rowannahs stamp, proposed to be abolished, than from any deliberate opinion in favour of a stamp legacy tax. On mature consideration I am not prepared to recommend any alteration of the present law, exempting from the stamp duty wills and petitions to the revenue Board. The latter should ever be free from tax, and stamp duty on wills will never be productive until the people are by law enabled to devise hereditary, as well as self-acquired property, against which I am quite aware that very serious objections exist.

But there can be no doubt that the other provisions in Regulation II. 1825, have operated most prejudicially against the stamp revenue. "The prominent cause of failure in the stamp revenue," says the collector of Guntoor, "I consider the enactment which renders plain paper available for deeds subject to a fine when used. If, as has been said, not more than one deed in a hundred finds its way to a court, it is not surprising that a revenue, secured by a decennial proportion of protection, should decline, and that stamped paper should fall into desuetude." Such is nearly the universal language of the reports from the other collectors, and I have no hesitation in stating that the benevolent views of the Government which enacted this law will be equally realized without any such sacrifice of revenue, if in lieu of the present universal exemption of all deeds from stamp duty, subject to a penalty of ten times its amount, when produced in court, rules similar to those which are contained in sections 14 and 15, Regulation X. 1829, of the Bengal Code, were applied to the Madras Presidency, making all deeds whatever liable to the stamp, and admitting unstamped deeds before our courts, under the present penalty, not universally as is now the case here, but solely in cases where, after due inquiry, it may be found indispensable to justice, as is the law in Bengal. I also submit that bonds under 64 rupees ought to be subjected to the stamp duty, as in Bengal, specified in the same law. Finally, I do not believe, that in extending the jurisdiction of the moonsiffs, it was ever contemplated to exempt from the established stamp duty the pleadings in suits so high as 1,000 rupees, merely because these suits happened to have been transferred to the native from the European courts for decision. To impose a tax on English justice, and to distribute native justice free from tax, seems at least of dubious policy. It has affected, and is likely still further to affect, the stamp revenue, and whether a remedy is not requisite, it is for your Board and Government to determine.

The abolition of the stamp duty on custom rowannahs, peculiar to this presidency alone, seems, after it had been suggested to the collectors by me, to have come under the consideration of the customs' committee, appointed by the Supreme Government. This tax is a mere addition to our custom duties, and of course falls on the consumers; but it is levied in its present shape at the expensive rate of 10 per cent., and, if continued, ought to be incorporated with the customs. The collectors, with few exceptions, concur with me in recommending the abolition of this source of revenue, which their reports show is, under the system of renting the customs, made a cover for all sorts of chicanery between the renters and the merchants, whose common interest it is to defraud the Government of it. Any tax must be objectionable which tends to produce such corruption of the morals of the people, which it is too much the custom to deplore, without adverting to the causes which produce it, or attempting to obviate them; and even were the

custom

custom rents abolished, this tax, though productive of less immorality, would still be equally vexatious, and liable to be made the cover for all kinds of exaction, or at least delay, which, to the merchant, is nearly equivalent. The difficulty of finding an equally productive but less objectionable substitute for it, is the sole ground upon which its abolition can be opposed.

I am of opinion that this might be obtained partly by extending to the Europeans and other inhabitants of this presidency enactments similar to those of Regulation X. 1829, of the Bengal Code, but chiefly by requiring all transfers or mortgages of real property throughout our territories to be registered and subjected to a stamp duty, as suggested by the principal collector of Cuddapah. Your Board are aware that, when I was principal collector in Tanjore, I strongly expressed to you my deliberate conviction that nothing would tend more to repress fraud, perjury, and litigation, or promote order and security, and free our courts from scenes which disgrace them and our administration of justice, than such a registry of real property. My judicial experience since has entirely confirmed the views, and though I should be glad to see it established free from all tax, I know none that would be more popular and productive. The purchaser and mortgagee would gladly pay for the increased security given to him, while such a tax would combine the revenue with the improvement of the morals of the people, which, in the taxation of India, should never be overlooked. Indeed, if I mistake not, sales of land have been recently restricted in Bengal to the revenue authorities, as I here recommended.

I am sorry to notice that the principal collector of Cuddapah reports frauds by the illicit disposal of stamps to the value of *Rs.* 4,600. 8*a.* Nothing could have been more open to objection than to exempt the stamp department, or any other, from the control of the head hoozoor serishtadar, and I beg your Board may be pleased to issue circular orders to prevent its recurrence. The removal of the stock of stamps from a public office to a private dwelling is also most improper; but I do not dwell on this subject further, as the inquiry seems still in progress.

I believe the crime of forgery to be greatly facilitated by the practice noticed by Mr. Gleig, of allowing stamp vendors to retain on hand for the supply of forgers, at enhanced prices, old stamps bearing the signature of former collectors, whilst they dispose to the people generally of those alone which are signed by their successors in office. The suggestion he has made, that the stamp darogah or treasurer should keep a book, in the form given by him, seems likely to check this practice. But I think it would be further promoted by the stamp papers signed by former collectors being, at the expiration of a certain period, say 12 months after quitting the districts, returned to their successors, and by them forwarded by the first coolies sent hence to this office, in order that they may be destroyed.

(signed) *A. D. Campbell,*
Superintendent of Stamps.

ABSTRACT STATEMENT of Stamp Revenue derived for Ten Fuslies, or from Fusly 1234 to Fusly 1243; viz. 13 July 1824 to 12 July 1834.

	Europe and Country Stamp Paper, applicable to Judicial and Revenue Purposes.	Europe Decree Paper applicable solely to Judicial Purposes.	Printed Rowannahs applicable to Mercantile Purposes.	Printed Rowannahs sold in the Sea Customs Department.	Abkarry Licences.	Tobacco Licences.	Cadjans.	Penalty.	Amount received in Pauper Causes.	Commission refunded, other Extra Revenue, &c.	Amount realised by Sales of the cutting of Paper.	Amount of Fine exacted from the Cooly Marstry, for Paper damaged in its Transit to the Principal Collector of Malabar.	TOTAL.
	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
Ganjam	1,50,591 6 –	2,544 – –	36,144 – –	9,488 10 –	350 – –	– – –	– – –	13,645 10 11	– – –	218 1 6	– –	– –	2,12,981 12 5
Vizagapatam	57,803 6 –	268 8 –	66,597 7 –	13,854 5 –	660 – –	– – –	– – –	215 – –	– – –	– – –	– –	– –	1,39,398 10 –
Rajahmundry	1,00,382 – –	2,010 8 –	78,270 7 –	14,146 6 –	770 – –	– – –	532 6 –	3,585 12 –	– – –	20 – –	– –	– –	1,99,717 7 –
Masulipatam	2,48,468 6 –	7,577 – –	72,187 8 –	9,872 11 –	330 – –	– – –	– – –	710 3 –	1,280 8 3	27 10 5	– –	– –	3,40,253 14 8
Guntoor	42,221 12 –	717 – –	87,494 13 –	– – –	300 – –	– – –	– – –	1,781 4 –	– – –	– – –	– –	– –	1,32,514 13 –
Nellore	72,169 – –	1,992 8 –	81,489 9 –	– – –	280 – –	– – –	– – –	7,496 12 –	– – –	30 8 1	– –	– –	1,63,458 5 1
Bellary	69,939 2 –	959 8 –	1,52,265 2 –	– – –	1,475 – –	– – –	– – –	7,045 6 11	– – –	11 1 –	– –	– –	2,31,695 3 11
Cuddapah	91,210 2 –	2,156 – –	1,04,759 12 –	– – –	1,320 – –	– – –	– – –	5,229 9 3	657 10 –	263 11 2	– –	– –	2,05,596 12 5
Chingleput	85,776 14 –	3,424 8 –	38,229 7 –	– – –	770 – –	– – –	6,725 12 –	10,465 1 4	– – –	134 7 6	– –	– –	1,44,924 1 10
Northern Division of Arcot	1,71,850 12 –	8,478 – –	1,05,511 2 –	– – –	880 – –	– – –	355 12 –	10,798 12 –	4,818 1 3	348 10 6	– –	– –	3,03,041 1 9
Southern Division of Arcot	26,606 6 –	222 – –	1,19,641 7 –	14,523 13 –	1,590 – –	– – –	14,158 2 –	2,810 – –	– – –	350 4 8	– –	– –	1,79,902 – 8
Salem	66,194 2 –	2,167 – –	1,26,738 5 –	– – –	2,215 – –	– – –	1,408 12 –	2,293 2 –	– – –	– – –	– –	– –	2,01,016 5 –
Tanjore	1,32,676 14 –	5,551 8 –	2,20,643 1 –	56,749 4 –	310 – –	– – –	53,638 4 –	2,108 12 –	2,717 10 6	1,541 – 1	– –	– –	4,75,936 5 7
Trichinopoly	69,978 12 –	2,721 – –	75,025 13 –	– – –	50 – –	– – –	7,181 2 –	2,180 15 5	3,658 9 7	– – –	– –	– –	1,60,796 4 –
Tinnevelly	59,072 10 –	825 – –	1,43,945 2 –	21,422 11 –	215 – –	– – –	– – –	4,781 12 –	750 12 –	106 14 9	– –	– –	2,31,119 13 9
Madura	76,505 6 –	2,833 8 –	60,763 10 –	11,869 12 –	810 – –	– – –	12,183 4 –	75,175 6 –	– – –	– – –	– –	– –	1,72,540 14 –
Coimbatore	57,800 6 –	1,380 8 –	1,00,979 – –	– – –	1,845 – –	– – –	8,577 2 –	1,454 4 –	– – –	4 – –	– –	– –	1,71,980 4 –
Malabar	2,22,540 – –	11,843 8 –	73,134 12 –	99,969 4 –	1,150 – –	21 2 –	84,104 – –	29,814 3 5	782 8 –	304 5 2	– –	– –	5,25,663 10 7
Canara	1,81,338 14 –	6,136 8 –	73,529 4 –	27,416 13 –	815 – –	1,066 2 –	17,827 10 –	11,919 8 –	– – –	118 11 8	– –	– –	3,19,868 6 8
Seringapatam	7,182 14 –	459 – –	– – –	– – –	10 – –	– – –	– – –	484 8 –	– – –	– – –	– –	– –	8,136 6 –
Madras	51,783 14 –	4,644 – –	37,544 3 –	21,062 8 –	235 – –	– – –	5,366 10 –	86 4 –	– – –	47 12 8	– –	– –	1,20,770 3 8
General Stamp-office	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	– – –	318 15 9	11 4 1	330 3 10
Total	20,41,490 14 –	68,711 – –	18,56,893 12 –	3,00,376 1 –	16,080 – –	1,087 4 –	2,11,998 12 –	1,26,482 2 3	14,663 11 7	3,527 3 2	318 15 9	11 4 1	46,41,642 15 10

Fort St. George, General Stamp Office, July 1835.

(E. E.)

(signed) *A. D. Campbell*,
Superintendent of Stamps.

623.

3 B

ABSTRACT.

Fuslies.	Europe Country stamped Papers applicable to Judicial and Revenue Purposes.	Europe Decree Papers applicable solely to Judicial Purposes.	Printed Rowannahs applicable to Mercantile Purposes.	Printed Rowannahs for the Sea Custom Department.	Abkarry Licences.	Tobacco Licences.	Cadjans.	Penalty.	Received from Paupers.	Commission refunded, and other Extra Revenue, &c.	TOTAL.	INCREASE.	DECREASE.
	Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
1234	2,49,309 10 –	7,234 – –	2,00,348 11 –	34,171 13 –	13,740 – –	161 6 –	36,210 14 –	5,757 11 –	5,716 7 6	1,814 10 11	5,54,465 3 5	—	—
1235	2,34,784 10 –	7,915 8 –	1,99,446 6 –	34,031 13 –	1,380 – –	97 14 –	25,445 6 –	6,437 13 –	1,039 – 3	266 14 1	5,10,845 4 4	1,786 2 11	45,406 2 –
1236	2,11,617 8 –	8,321 8 –	2,01,180 7 –	34,121 10 –	- - -	106 4 –	23,330 4 –	7,505 – –	2,582 – 6	205 9 1	4,88,970 2 7	4,848 7 3	26,723 9 –
1237	2,04,997 2 –	8,417 – –	2,14,308 8 –	28,798 9 –	50 – –	133 10 –	20,870 6 –	15,697 15 1	388 14 1	143 15 5	4,93,805 15 7	21,493 14 1	16,658 1 1
1238	2,03,694 – –	7,522 8 –	2,17,970 9 –	30,888 10 –	400 – –	124 12 –	18,898 8 –	13,150 4 –	613 10 5	196 9 9	4,93,459 7 2	6,387 1 6	6,733 9 11
1239	2,02,763 14 –	7,589 8 –	1,82,311 11 –	30,272 9 –	510 – –	81 6 –	18,347 2 –	18,437 2 10	1,222 12 11	155 5 1	4,61,691 6 10	6,091 15 10	37,860 – 2
1240	1,82,960 8 –	5,972 8 –	1,65,715 7 –	28,603 15 –	- - -	86 14 –	17,065 4 –	23,387 4 –	1,443 – 3	288 12 8	4,25,523 8 11	5,309 4 1	41,477 2 –
1241	1,83,811 – –	5,994 8 –	1,82,009 6 –	27,812 13 –	- - -	73 8 –	17,036 4 –	11,577 10 11	684 2 7	307 6 8	4,29,306 11 2	17,258 9 –	13,475 6 9
1242	1,87,815 2 –	5,017 8 –	1,54,399 9 –	20,140 4 –	- - -	75 10 –	1,67,778 6 –	12,539 7 5	423 13 1	228 15 8	4,03,419 11 2	5,027 8 6	30,914 8 6
1243	1,79,693 8 –	4,726 8 –	1,39,203 2 –	25,533 1 –	- - -	146 – –	18,016 6 –	11,991 14 –	551 14 –	249 3 8	3,80,155 8 8	1,560 2 11	24,824 5 5
Total - -	20,41,446 14 –	68,711 – –	18,56,893 12 –	3,00,376 1 –	16,080 – –	1,087 4 –	21,11,998 12 –	1,26,482 2 3	14,665 11 7	3,357 7 –	46,41,642 15 10	69,763 2 1	2,44,072 12 10
	44 – –												69,763 2 1
	20,41,490 14 –	This included 44 rupees omitted in the last sale, but added in this Fusly Account.									Actual Decrease in the Gross Revenue - - -		1,74,309 10 9

Fort St. George, General Stamp Office,
13 February 1835.

(signed) *A. D. Campbell,*
Superintendent of Stamps.

No. 7.
On Stamps.

No. 7.
On Stamps.

ABSTRACT of INCREASE and DECREASE for the last Ten Fuslies, from 1234 to 1243.

	Increase.			Decrease.		
	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*
1. Masulipatam	-	-	-	29,544	6	–
2. Tanjore	-	-	-	21,974	13	7
3. Ganjam	-	-	-	18,524	1	–
4. Canara	-	-	-	16,036	–	–
5. Bellary	-	-	-	12,601	5	–
6. Malabar	-	-	-	11,198	15	8
7. Northern Division of Arcot	-	-	-	10,021	7	11
8. Madeira	-	-	-	8,193	10	–
9. Salem	-	-	-	7,967	15	–
10. Nellore	-	-	-	7,753	9	–
11. Guntoor	-	-	-	7,665	6	–
12. Chingleput	-	-	-	6,317	–	7
13. Madras	-	-	-	5,195	7	6
14. Tinnevelly	-	-	-	4,623	1	–
15. Trichinopoly	-	-	-	3,766	3	3
16. Southern Division of Arcot	-	-	-	2,177	11	8
17. Vizagapatam	-	-	-	1,969	11	–
18. Seringapatam	-	-	-	1,900	14	–
19. Cuddapah	-	-	-	417	5	3
General Stamp-office cuttings	-	-	-	58	3	4
1. Rajahmundry	2,745	3	–	—		
2. Coimbatore	852	5	–	—		
Rs.	3,597	8	–	1,77,907	2	9
				3,597	8	–
Rs.				1,74,309	10	9

(E. E.)

(signed) *A. D. Campbell,*
Superintendent of Stamps.

Fort St. George, General Stamp Office,
13 July 1835.

STATEMENT exhibiting the Gross Amount of Annual Collections of Rowannahs on Goods in Transit, in the Madras Presidency, from Fusly 1231 to 1243.

	1 Anna.		4 Annas.		8 Annas.		1 Rupee.		2 Rupees.		4 Rupees.		10 Rupees.		20 Rupees.		TOTAL.	
	Rolls.	*Rs. a.*	*Rolls.*	*Rs. a.*	*Rolls.*	*Rs. a.*	*Rolls.*	*Rs.*	*Rolls.*	*Rs.*	*Rolls.*	*Rs.*	*Rolls.*	*Rs.*	*Rolls.*	*Rs.*	*Rolls.*	*Rs. a.*
1231 - - -	9,47,485	59,217 13	2,70,151	67,537 12	1,28,601	64,300 8	32,586	32,586	16,686	33,372	5,310	21,240	254	2,540	145	2,900	14,01,218	2,83,694 1
1232 - - -	9,08,197	56,762 5	2,61,624	65,406 –	1,22,712	61,356 –	29,586	29,586	15,871	31,742	554	22,192	206	2,060	80	1,600	13,43,824	2,70,704 5
1233 - - -	8,46,674	52,917 2	2,49,516	62,379 –	1,17,136	58,568 –	29,287	29,287	15,873	31,746	4,920	19,680	221	2,210	93	1,860	12,63,720	2,58,647 2
1234 - - -	7,75,276	48,454 12	2,17,205	54,301 4	1,00,517	50,258 8	25,398	25,398	15,031	30,062	5,434	21,736	237	2,370	97	1,910	11,39,195	2,34,520 8
1235 - - -	7,68,351	48,021 15	2,15,947	53,986 12	1,05,231	52,615 8	24,734	24,734	14,177	28,354	5,474	21,896	201	2,010	93	1,860	11,34,208	2,33,479 8
1236 - - -	7,18,869	44,929 5	2,11,483	52,870 12	1,08,340	54,170 –	27,206	27,206	14,479	28,958	5,717	22,868	246	2,460	92	1,840	10,86,432	2,35,302 1
1237 - - -	7,34,825	45,926 9	2,18,202	54,550 8	1,13,588	56,794 –	28,752	28,752	15,818	31,636	5,562	22,248	186	1,860	67	1,340	11,17,000	2,43,107 1
1238 - - -	7,47,199	46,699 15	2,18,073	54,518 4	1,15,042	57,521 –	28,648	28,648	16,292	32,584	6,142	24,568	244	2,440	94	1,880	11,31,734	2,48,859 3
1239 - - -	6,66,740	41,671 4	1,79,900	44,975 –	95,140	47,570 –	23,868	23,868	14,223	28,446	5,576	22,304	211	2,110	82	1,640	9,85,740	2,12,584 4
1240 - - -	6,35,582	39,723 14	1,63,936	40,984 –	86,619	43,309 8	21,174	21,174	13,284	26,568	4,995	19 980	130	1,300	64	1,280	9,25,784	1,94,319 6
1241 - - -	7,85,859	49,116 3	1,76,300	44,075 –	89,444	44,722 –	22,269	22,269	13,370	26,740	5,020	20,080	114	1,140	84	1,680	10,92,460	2,09,822 3
1242 - - -	6,03,617	37,726 1	1,52,015	38,003 12	81,202	40,601 –	19,936	19,936	12,087	24,174	4,325	17,300	128	1,280	76	1,520	8,73,386	1,80,540 13
1243 - - -	5,54,043	34,627 11	1,38,240	34,560 –	71,709	35,854 8	18,052	18,052	11,536	23,072	4,085	16,340	109	1,090	57	1,140	7,97,831	1,64,736 3
TOTAL - -	96,92,717	605,794 13	26,72,592	6,68,148 –	13,35,281	6,67,640 8	3,31,496	3,31,496	1,88,727	3,77,454	68,108	2,72,432	2,487	24,870	1,124	22,480	1,42,92,532	29,70,315 5

Fort St. George, General Stamp Office,
13 July 1835.

(signed) *A. D. Campbell,*
Superintendent of Stamps.

No. 7.
On Stamps.

No. 7.
On Stamps.

(Circular.)

To the Collectors.

Fort St. George, General Stamp Office,
9 March 1835.

Sir,

Para. 1. Within the last ten years the revenue from stamps has fallen off in the large sum of 1,74,309 rupees per annum.

2. This extraordinary defalcation attracted my special attention on taking charge of this office. My first duty has been to trace it, in the inclosed statement, to its origin in each district; my next is, to communicate it to you for inquiry and report, and to solicit your aid in preventing its further diminution; and your opinion as to the steps to be taken to check any abuses that may have arisen to remedy any evils complained of, and eventually to raise the revenue from this source to its former state.

Masulipatam.
Tanjore.
Ganjam.
Bellary.
Northern Division of Arcot.
Madura.
Nellore.
Guntoor.
Chingleput.
Madras.
Canara.
Malabar.
Salem.
Tinnevelly.
Trichinopoly.
Southern Division of Arcot.
Vizagapatam.
Cuddapah.

3. To prevent this branch of revenue suffering from fraud and illicit sales, it is absolutely necessary that you should take steps promptly to compare the stock of stamps on hand with the accounts of the venders or darogahs, so as to discover whether or not any stamps have been secretly sold without being brought to account.

4. You will also be pleased to revise the distribution of the five per cent. authorized to be granted to the stamp darogahs in my predecessor's letter of the 20th September 1817; you will report particularly to me the manner in which it has hitherto been disposed of, and how far you may deem its distribution capable of improvement, with the view of exciting the zeal of the darogahs. You will consider yourself at liberty to stop this allowance where they may be inert; and in all cases you will call upon them to report on the cases which have operated to produce this decrease in the stamp revenue, communicating the result to me.

5. I shall be happy to receive from you any suggestions that may occur to you for the improvement of the stamp duties. It appears to me highly desirable to exempt custom rowannahs from this tax, but it may be necessary to find a substitute for the large revenue now derived from this source, and I should be glad of your opinion on this point. It strikes me that it may be advisable to enable all natives to dispose of their property by will, subjecting such bequests to a stamp duty, which would in this case operate only upon those newly inheriting property.

6. The best means of giving effectual operation to the law requiring all receipts to be on stamp paper, appear likewise worthy of consideration by you; for it is apprehended that it does not operate extensively in practice.

Masulipatam.

7. I regret to add, that the decrease of stamp revenue has been greater in your district than in any other; so much so as to give rise to suspicion of the existence of frauds on the part of the native officers under you, over whose conduct I solicit your utmost vigilance. The revenue from revenue and judicial papers has fallen from upwards of 37,000 rupees to less than 17,000 rupees, whilst it has increased in the neighbouring districts of Vizagapatam and Rajahmundry.

Tanjore.

There is only one district where the decrease exceeds that in Tanjore. The consumption of revenue and judicial papers has not only decreased, but the loss of nearly 10,000 rupees per annum from the land customs rowannahs appears to evince some change in the management of that branch of revenue requiring scrutiny and explanation.

Ganjam.

The consumption of revenue and judicial papers has fallen from 19,000 rupees to 4,000 rupees, but it is hoped that the restoration of order in the province under you may speedily operate beneficially in restoring this branch of receipt to its previous state.

Bellary.

The consumption of revenue and judicial papers appears to have fallen off more than one-half; and the decrease, under the head of rowannahs, requires investigation and explanation in a particular manner.

Northern Division of Arcot.

The consumption of revenue and judicial papers in your district has of late years been remarkably deficient.

Madura.

In every item of the stamp revenues in your district the decrease has been considerable.

Nellore.

The remarkable results exhibited in the inclosed statement demand your early notice and strict inquiry.

Guntoor.

Although the unhappy condition of the district under your charge no doubt in a great degree accounts for the results exhibited in the enclosed statement, I have not withheld this circular communication from you.

The

The consumption of revenue and judicial papers seems to have gradually dwindled to one-third of its original amount. Chingleput.

In conclusion, allow me to solicit the favour of your opinion as to the expediency of extending to this presidency the rules respecting stamps, lately extended to Calcutta. Madras.

(signed) *A. D. Campbell,*
Superintendent of Stamps.

From *P. B. Smollett*, Esq. Acting Collector, Masulipatam, to the Superintendent of Stamps.

Fort St. George, Masulipatam,
7 May 1835.

Sir,

Para. 1. I HAVE the honour to acknowledge the receipt of your letter of the 9th March, bringing to notice the great defalcation of late years in the revenue derived from the sale of stamps in the provinces subordinate to the Madras government.

2. On the receipt of your communication an examination of the accounts of the huzzoor stamp darogah was immediately made by the late collector, Mr. Gleig, and the stock on hand having been compared therewith, they were found to correspond exactly with the balance of paper in deposit up to the date of examination. The huzzoor stamp darogah, to whose keeping the greater portion of the stamp paper is entrusted, and who alone disposes of any high value, has given ample security for the proper discharge of his duties, and for the safe custody of the paper committed to his charge; there is no reason therefore to suppose that the falling off in this branch of revenue has been occasioned either by fraud or illicit sales in this district.

3. One reason for the abatement, of late years, in the demand for stamps at Masulipatam, has been the transfer since 1827 of the zillah court from this station to Rajahmundry, a measure which has naturally led to an increase of revenue from the sale of stamped papers in that district, as observed in the concluding paragraph of your letter, now under observation; but the chief cause of the decrease of stamp revenue is, I am inclined to think, to be ascribed to the great general decline in the prosperity of the district, caused by the adverse nature of the late seasons, which has reduced from wealth and affluence to comparative poverty many influential landed proprietors and traders, and thereby contributed to check litigation in the courts, and diminish the stamp revenue accruing from inland traffic. It is not in one branch alone that the source of revenue has declined, but all under the head of Europe Decree Paper. The average annual revenue for the four years ending with fusly 1237, was 1,200 rupees, while that of the corresponding period ending with fusly 1243, did not produce 400 rupees. In fuslies 1234 and 1235 the land custom rowannahs yielded nearly 10,000 rupees per annum; in fuslies 1242 and 1243 they barely produced 4,000 rupees. In the Sea Custom department a great falling off is also perceptible; and these results, I submit, can only be accounted for by the great deterioration of late years in the prosperity and internal resources of the country.

I am disposed to concur with you in opinion that it would be highly desirable to exempt customs rowannahs from the stamp tax. In districts where the customs are farmed the renters have recourse to a variety of methods to evade the imposition, which it is extremely difficult to detect; but this is a point to which the attention of the committee lately appointed to revise the entire system of the inland custom duties throughout the British territories will probably be directed. The suggestion of enabling natives to dispose of property by will, subjecting such bequests to a stamp duty, is I think of questionable propriety. Its operation would be altogether nugatory so long as the Regulation declaring the wills of Hindoos to be of no legal force, except so far as their provisions may be in conformity with Hindoo law continues unrepealed; but the proposition would seem to imply the imposition of a legacy duty, a tax open to many objections, and one which in this country it would be difficult, if not impracticable, to realize.

5. All stamp darogahs in this district are remunerated by an allowance of 5 per cent. upon their sales, and no alteration in the distribution of this commission seems to me to be required.

I have, &c.
(signed) *P. B. Smollett,*
Acting Collector.

No. 7.
On Stamps.

From *N. W. Kindersley*, Esq. Principal Collector, Tanjore, to the Superintendent of Stamps.

Sir, Tanjore, Chellavah, 22 May 1835.

Para. 1. I HAVE the honour to acknowledge your circular of the 9th March, on the subject of the defalcation in the stamp revenue in the last ten years, and to inform you that, in my opinion, there is not the smallest room for supposing that any kind of fraud is committed in the sale of stamps, and that the defalcation is to be accounted for without difficulty by other causes.

INCREASE.				DECREASE.			
	Rs.	*a.*	*p.*		*Rs.*	*a.*	*p.*
Penalties -	228	12	–	Commission refunded -	1,260	8	11
Paupers -	301	15	4		530	11	4
	530	11	4		729	13	7
					20,130	6	11
					19,400	9	4

2. You have taken the highest year's revenue as your standard; viz. fusly 1234, and comparing with it the average gross revenue of the following nine years, the inclosed statement shows a defalcation of 20,130*rs.* 6*a.* 11*p.* per annum. Of the items from which this net decrease is deducted, the three noted in the margin should be excluded, as incidental, and the net decrease is thus reduced to 19,400 *rs.* 9*a.* 4*p.*

3. Of this amount 6,440 *rs.* is in stamp paper, which is used almost exclusively in court proceedings; its consumption for revenue purposes having been confined during the period under review to powers of attorney to agents employed by individuals for the transaction of business at the huzzoor and talook cutcherries, and to moochilkahs and puttahs exchanged with sayer renters, till fusly 1239, when stamp paper was declared by Regulation VII. of 1829 to be no longer requisite, and to petitions to the Board of Revenue, which together with those addressed to criminal judges, &c. were also exempted from the stamp towards the end of fusly 1234.

By sec. 5, Reg. II. of 1825.

4. These exemptions will abundantly account for the decrease in the fractional proportion of stamp paper consumed in the revenue department. Of the causes of its decrease in judicial proceedings I do not feel confident to speak; but the fact that the charge of the zillah court of Combaconum has changed hands 14 times during the last seven years, may in some measure account for it, by the interruption of civil business that such frequent changes must necessarily occasion, every fresh incumbent having to retrace the mazes of each suit left undisposed of by his predecessor, to say nothing of the civil business being entirely suspended from the departure of the old till the arrival of the new incumbent, during which interval a junior officer is left in charge.

5. The reduction by one half of the fees payable to district moonsiffs, under Regulation II. of 1828, and the extension of their jurisdiction under Regulation III. of 1833, will also in some measure account for the decrease in the use of stamp paper in the Judicial department.

6. The greatest decrease in the sale of sayer rowannahs is chiefly to be accounted for by the substitution of blank for stamp paper in the preparation of free exchange rowannahs, under the orders of the Board of Revenue. It will be seen that the consequence was a decrease in this item of about 9,050 rupees in the following fusly, and that the revenue derived from this branch has never since approached your standard, except in fusly 1241, when the sayer was under aumany. The great sale of stamp rowannahs in that year as compared with the two preceding and two succeeding fuslies, shows the extent to which the sayer renters carry the practice of issuing blank permits for the transit of goods within the limits of their respective rents, and the greater the number of talooks rented by one individual, to the greater extent of course can this be carried. No endeavours have been wanting to prevent this by fining the renters and rewarding informers when detections have occurred, but as both the renters and dealers are gainers by the arrangement, these are by no means frequent.

21 May 1835.

1841 - - 28,482
1239 - - 16,159
1240 - - 18,206
1242 - - 18,523
1245 - - 19,515

7. The transfer to his Highness the Raja of the sayer, within the new limits assigned to the fort of Tanjore, is another cause of the decrease in the consumption of sayer rowannahs.

8. Abkarry licences having been exempted from the stamp by Regulation II. of 1825, accounts for the decrease in that item.

9. Stamp cadjans are used almost exclusively in money transactions, and in deeds

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deeds relating to the sale, mortgage, or other transfer of land. The amount of sales of stamp cadjans had progressively increased from 5,771 in fusly 1230, to 10,197 in fusly 1234, and of stamp paper, from 9,676 to 19,619 in the same period. In 1234 they seem both to have reached their maximum, and have since suffered a gradual decline. The exemption of all bonds, &c., for an amount not less than 64 rupees, by Regulation II. of 1825, will partly account for this in both, especially in the cadjans; but it is remarkable that the consumption of both was highest in the second of two years of scarcity and famine, which, while it gave an unusual stimulus to trade in this province, by the greatly increased demand for agricultural produce, reduced many small landholders and others to the necessity of selling or mortgaging their property for the supply of their immediate wants.

10. With reference to the 4th paragraph of your letter under reply, I have the honour to inform you that no distribution is made in this district of the 5 per cent. authorized to be paid to stamp vendors, and to refer you to the correspondence noted in the margin with the Board of Revenue, who, you will perceive, are of opinion that it cannot be made without the sanction of Government.

From Board, dated 25th October 1827.
To Board, dated 1st May 1828.
From Board, dated 16th Nov. 1829.
To Board, dated 24th November 1829.
To Board, dated 30th August 1834.
From Board, dated 15th Sept. 1834.
To Board, dated 27th November 1834.

11. I am not aware of any measures that would be likely to improve the stamp revenue without adding to the grievances already suffered under this tax. I perfectly agree with you that it is highly desirable to exempt custom rowannahs from stamp duty, which is but an addition to the acknowledged vexatious sayer duty; but to find an equivalent for the loss of revenue which this exemption would entail in a stamp upon wills, I consider to be absolutely impracticable. The annual amount of property at present willed away in this district, is probably not equal to the stamp duty on customs rowannahs; and to make it legal for all natives to dispose of their property by will, would be to annul the Hindoo Code as relates to the inheritance of property, respect for which seems to have occasioned the enactment of Regulation V. of 1829, which declares wills to be "Instruments unknown and totally repugnant to the Hindoo law."

12. It is most certain that the provision which requires a stamp to give validity to receipts for money does not operate extensively in practice. The best means of extending its operation would be those (whatever they may be) which would most effectually operate to increase the natural distrust between man and man, a sacrifice of morality to revenue hardly desirable.

(signed) *N. W. Kindersley,*
Principal Collector.

STATEMENT showing the DEFALCATION in the Stamp Revenue in the Province of *Tanjore.*

	Stamp Beriz of Fusly 1234.	Average of Stamp from Fusly 1235 to Fusly 1243.	INCREASE.	DECREASE.
	Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
Europe and country stamp-papers	18,971 12 –	12,633 14 5	– – –	6,337 13 7
Europe decree papers	647 8 –	544 14 2	– – –	102 9 10
Land custom rowannahs	28,893 8 –	21,305 8 1	– – –	7,587 15 11
Sea custom rowannahs	5,577 15 –	5,685 11 2½	108 12 2½	—
Abkarry rowannahs	130 – –	20 – –	– – –	110 – –
Cadjans	10,197 10 –	4,826 11 9	– – –	5,370 14 3
Penalty	5 – –	233 12 –	228 12 –	—
Paupers	– – –	302 15 4	301 15 4	—
Commission refunded	1,288 9 7	28 – 8	– – –	1,260 8 11
TOTAL – – – *Rs.*	65,711 14 7	45,581 7 7½	639 7 6½	20,769 14 6
Deduct Increase – – – – – –				639 7 6½
Net Decrease – – – *Rs.*				20,130 6 11½

Tanjore, Chellavah, 22 May 1835.

(signed) *N. W. Kindersley.*

No. 7.
On Stamps.

From *J. A. R. Stevenson*, Esq. Collector, Ganjam District, to the Superintendent of Stamps, Fort St. George.

Ganjam District, Collector's Circuit, Cutcherry,
Itchapoor, 3 April 1835.

Sir,

Paras. 6, 7, 8, of Mr. Ogilvie's letter to Board of Revenue, dated 19 Sept. 1834. Ditto, dated 9 Nov. 1834.

With reference to your circulars of the 9th and 25th ultimo, I have the honour to enclose copies of communications on the subject of the falling off of the stamp revenue made by my predecessor to the Board of Revenue. Any further information which may be the result of my inquiries shall be made known to you with as little delay as the subject will admit of.

(signed) *J. R. Stevenson*, Collector.

Extract of a Letter from Mr. *Ogilvie*, Collector of Ganjam, to the Resident and Members of the Board of Revenue, dated 19 September 1834.

Para. 6. The falling off in the collections of stamps 50 per cent. below fusly 1240, adverted to in the same paragraph, are in the following description of papers:—

	Collections of Fusly 1241.	Collections of Fusly 1242.	DECREASE.
	Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*
Judicial, &c. papers	11,782 12 –	7,569 4 –	4,213 8 –
Sayer rowannahs	2,836 13 –	2,807 7 –	29 6 –
Sea-custom rowannahs	473 3 –	338 13 –	134 6 –
	15,092 12 –	10,715 8 –	4,377 4 –
Amount of penalties received from the zillah judge	1,626 15 6	834 15 5	792 – 1
Madras Rupees	16,719 11 6	11,550 7 5	5,169 4 1

7. The decrease in the judicial stamp papers is entirely owing to fewer suits being instituted before the zillah court. It appears, from information received, that 412 were the number in fusly 1241, and 290 in fusly 1242. I know it is customary for suitors to remit to their pleaders fees in this paper money, a course I think highly objectionable, because it is only followed by suitors residing in the Vizagapatam district. It is a safe way, they imagine, of making a remittance, and the pleader who receives it will turn this paper into money so soon as he can, by selling it to the court as stamp paper in another suit, thereby injuring the sale of the Ganjam stamps. I think it advisable this system should not be permitted any longer to the injury of the stamp revenue in Ganjam, but to make one general rule for both this and the neighbouring district. I have had some difficulty in discovering this system pursued between pleaders and their Vizagapatam clients, and I think it deserves the attention of the Board. The Narsanapeta moonsiff, for two years past, has been desired to hold his court at Chicacole; many suits, consequently, having gone to him that would otherwise have come before the zillah court: this may be stated as another cause of the extreme diminution. He has very lately, I am informed, been directed to return to Narsanapeta.

8. The greatest decrease in the stamp revenue is in the particular description of paper sold for the use of the zillah court. The decrease in the sayer rowannahs is very trifling; that under sea custom rowannahs was caused by the exemption of duty upon grain; and that on penalties I have no control over; what the judge remits under that head is deposited in the treasury.

(True extract.)

(signed) *J. A. R. Stevenson*, Collector.

No. 7.
On Stamps.

From *G. M. Ogilvie*, Esq. Collector, Ganjam, to the Resident and Members of the Board of Revenue, Fort St. George.

Ganjam District, Collector's Circuit Cutcherry,
Gentlemen, Poondy, 9 November 1834.

Para. 1. With reference to the seventh paragraph of my letter, dated the 19th September, I have the honour to submit further explanations regarding the practice of remitting stamp paper from Vizagapatam in place of money, to pleaders in the zillah court, as directed in your secretary's letter of the 27th ultimo.

2. A suitor or any other person, it matters not, residing at Vizagapatam, is indebted to a pleader in the Chicacole Court the sum of 40 rupees; he has no safe opportunity of sending this money in silver, but he purchases stamped paper at Vizagapatam to the same amount, and forwards it, requesting the pleader to dispose of the paper as soon as possible, and he will get paid.

3. The stamped paper, on its arriving, is of no use to the pleader until he realizes the amount of it, and this he contrives to do by means of a suit carrying on in court, where stamped paper to the amount of 40 rupees is required. He will say to a Chicacole client who has engaged him in the cause, "I have by me stamped paper sufficient for your answer; give me 40 rupees, the value of it, and you will be saved the trouble of going to the cutcherry to purchase." The pleader in this manner turns at once into money the Vizagapatam remittance, and it matters nothing to the Chicacole client where the paper comes from, so long as it is at hand.

4. Transactions of this nature must injure the sale of the stamped paper in Ganjam; the Chicacole client, as I have just shown, is enabled to file his suit or to give in an answer into court upon paper originally purchased at Vizagapatam.

(signed) *G. M. Ogilvie*, Collector.

(True copy.)
(signed) *J. A. R. Stevenson*, Collector.

From *J. A. R. Stevenson*, Esq. Collector, Ganjam, to the Superintendent of of Stamps, Fort St. George.

Ganjam District, Collector's Cutcherry, Chetterpore,
Sir, 19 May 1835.

With reference to my letter of the 3d ultimo, I have now the honour to report the result of my inquiries on the subject of your circular of the 9th March.

There does not appear, from the examination of the accounts and the stock on hand of the vendors, to be any reason to subject illicit sales of stamp papers.

The five per cent. commission is now drawn entirely by the actual vender; it would be, perhaps, advisable to give two per cent. to the darogah and three per cent. to the vender, the darogah of course drawing the whole five when he is the actual vender. The commission hitherto drawn, however, by the venders is very trifling.

The causes of the decrease of revenue from the sale of stamps in the judicial department in this district arises—

1st. From the establishment of a native judge at Vizagapatam, which very considerably affects the sale of stamp-paper at Chicacole.

2d. From a decreased quantum of litigation, owing to the disturbed state of the district; and

3d. Possibly from a decreased spirit of litigation.

I can design no means of increasing the revenue on judicial stamps. It is desirable that litigation should decrease, and that justice should be cheap.

The decrease in revenue derived from the sale of sea customs sayer stamp, arises—

1st. From the check to trade, owing to the disturbances which have prevailed in different parts of the district.

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2d. To the prevalence of more fraud, owing to the customs, &c. being rented since 1231, which renders it more difficult, especially in the zemindaries, to check malversation in this department.

The following are two modes of defrauding the stamp revenue, by the collusion of the Customs renter and the merchants.

The stamp duty on goods above the value of 10 below that of 50 rupees, is four annas; for traders having goods which together amount to that value, pass it under one name, paying for one instead of four stamps.

Again, a merchant pays the regular duties, and imports 1,000 rupees' worth of goods into Berhampore, which are probably entirely consumed in that place. However, the parties interested make it appear that 500 rupees' worth of his property is sent on further; under this pretence, they pass goods to this value exempt from stamp duty. Orders have been issued by me on these subjects; but it is very difficult indeed to prevent fraud, and this is an additional reason why means should be devised to exempt customs rowannahs from the stamp duty.

It strikes me that a stamp duty might be levied, not only upon bequests by will, but upon all transfers of land or real property, whether by inheritance or by any other means, the duty being higher in cases where the property acquired costs least to the person obtaining.

(signed) *J. A. R. Stevenson*, Collector.

(No. 3.)

From *Charles Roberts*, Esq. Principal Collector, Northern Division of Arcot, to the Superintendent of Stamps, Fort St. George.

Sir,

Stamp Department.

Para. 1. I HAVE the honour to acknowledge the receipt of your circular letter of the 9th ultimo, forwarding a statement of decreased revenue derived from stamps during the last ten fuslies, and requesting an explanation of the causes to which it is attributable.

2. The accompanying statement has been prepared more in detail than that received from you, in order that the particular heads of decrease may be more explicitly defined, at the same time exhibiting the total loss of revenue to a much greater extent than appears by your statement, owing to the effects of recent regulations.

3. Nearly one half of the total decrease, 10,021 rupees, shown by your statement, is in the decreased sale of papers exclusively judicial, 4,079 rupees. The courts are better enabled to afford a particular explanation of this; but I may observe generally, that the expenditure of papers appears to be in a great measure dependent on the means of the people to litigate. Thus in the worst years, or those succeeding them, the sale was for a smaller amount than in favourable years.

4. The extent of sayer moochilka papers' sale depends evidently on the sayer being rented or under aumany, as well as the amount at which the sayer is rented. This, therefore, cannot be controlled.

5. I fear we must look to the decrease in the sale "of money transaction papers" to the poverty of the people; and to this cause at the same time is perhaps to be assigned the great increase in the penalties, 640 rupees; parties apparently endeavouring to obviate the cost of these papers until obliged, by reference to a court of law, to procure stamps. The only method of precluding money transactions on blank paper would be by increasing the penalty; but I would not advocate such a measure, as it is not to be supposed parties would incur the penalty, unless the saving the cost of the papers was an object of consideration. To the exception by section 4, Regulation II. of 1825, on instruments not exceeding 64 rupees, some decrease is to be assigned.

6. Although the decrease in Europe decree papers is, one year with another, but 127 rupees in the whole 10 years, yet the courts must explain the amazing discrepancy

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discrepancy in the required sale of these which appears in particular years. It will be seen by my statement that in fusly 1236 the number of rolls sold were 1,614, valued at 1,268 ½ rupees; and that in some years, more especially in the three last, the extent of sales and value do not equal one half that quantity, and that they were otherwise very limited.

7. The sale of land custom rowannahs, as a matter of course, should depend alone on the trade of the country; and this is ascertained, perhaps, pretty correctly by the increase and decrease of the annual offers for the rent. But this is not a very true criterion, as it is well known that during a rent the farmer and under-farmers frequently substitute blank rowannahs for stamps, receiving a portion only of what would be the value of the rowannah, and thus allowing the merchants that participation in the fraud which acts as a check to the discovery of the stamp. Revenues under this head, though necessarily fluctuating, are sometimes very considerable. In fusly 1238 they amounted to 13,166 rupees. I would not suggest the exemption of stamps in this department, nor do I concur with you in considering such advisable. The payment falls on the consumers, the richer portion of the inhabitants, who in these districts make no payment to Government for the security to life and property which the police and other establishments afford, and are exempt from those payments and taxes which others, especially cultivators, are subjected to; nor am I aware that the exemption of the tax could be met by the levy of any other. Little would be realized by taxing wills, as suggested.

8. The decrease in abkarry licences is inserted in your statement at 880 rupees, but in point of fact it amounts to more than 7,920 rupees, being nine times that sum. 880 rupees was the amount collected in fusly 1234, the last year in which these papers were stamped, as per Regulation II., A.D. 1825; but as the rent of abkarry has increased with that of the sayers, so would the extent and value of stamps have been, had they continued.

9. The people object to cadjan accounts. Where paper is optional it is not probable they will ever resort to them again, nor is such advisable, from a variety of circumstances. They are lumbering documents, subject to destruction; for if a slit is made at the hole intended for string to pass through, it is understood as a proof of the document being cancelled. The preference of the paper to cadjan may be deemed one proof of improved civilization among the people.

10. The value of stamps recovered from paupers on decrees being passed in their favour, is very fluctuating, and does not from its nature require any particular remark, neither do the other petty subjects which conclude the statement.

11. The comparison of the stock of stamps in the darogah's hands with the accounts has been made and found perfectly correct. The talook seristidars and police ameers are also venders, and the thasildars have been directed to make similar investigations into their accounts and papers. This is in progress. Six thasildars have reported satisfactorily on the subject.

12. The darogah receives 5 per cent. on all papers sold by him. The under-venders (the sheristidars and ameens) receive three per cent. on the papers sold by them; and the darogah the remaining two per cent. I consider this a proper remuneration, and am not aware that a better can be suggested.

(signed) *Charles Roberts*,
Principal Collector, Northern Division of Arcot.

Chittoor, 16 April 1835.

STATEMENT showing the REVENUE derived from STAMPS in the District of the Northern Division of *Arcot*, for the last Ten Fuslies, or from 13th July 1824 to 12th July 1834, and the Increase and Decrease.

DESCRIPTION OF PAPERS. 1.	Fusly 1234. 2.		Fusly 1235. 3.		Fusly 1236. 4.		Fusly 1237. 5.		Fusly 1238. 6.	
	Roll.	*Rs. a. p.*	*Roll.*	*Rs. a. p.*	*Roll.*	*Rs. a. p.*	*Rolls.*	*Rs. a. p.*	*Rolls.*	*Rs. a. p.*
Judicial papers, exclusive decree	11,394	13,241 – –	8,382	15,023 12 –	9,929	14,844 4 –	7,750	11,530 – –	9,557	14,411 – –
Puttah and moochelecah of sayer rent	203	962 – –	238	919 – –	190	1,117 – –	200	1,488 – –	86	980 – –
Papers of money transaction	12,704	4,484 – –	4,086	2,345 10 –	3,830	2,380 10 –	4,258	2,375 8 –	5,020	2,732 – –
Total	24,301	18,697 – –	12,706	18,288 6 –	13,949	18,341 14 –	12,208	15,393 8 –	14,663	18,123 – –
Europe decree papers, applicable solely for judicial purposes	726	542 8 –	1,400	1,034 – –	1,614	1,268 8 –	1,194	852 8 –	1,461	1,089 – –
Land customs rowannahs	43,011	8,550 – –	51,782	9,426 15 –	59,044	12,400 11 –	58,214	11,992 8 –	66,042	13,166 3 –
Abkarry licences	43	880 – –	—	—	—	—	—	—	—	—
Cadjans	666	148 – –	79	32 4 –	285	110 12 –	48	29 8 –	31	16 12 –
Penalty	– –	350 – –	– –	– – –	– –	270 – –	– –	872 8 –	– –	871 4 –
Recovered from paupers	– –	2,142 11 3	– –	119 – –	– –	1,721 – –	– –	138 4 5	– –	84 2 9
Commission refunded	– –	17 7 –	– –	7 3 8	– –	94 11 10	– –	– 15 –	– –	77 7 2
Fraction	– –	3 2 8	– –	2 – 7	– –	– 8 5	– –	– 1 5	—	—
Security papers of thaseeldars, &c.	—	—	—	—	—	—	—	—	—	—
Total	– –	20 9 8	– –	9 4 3	– –	95 4 3	– –	1 – 5	– –	77 7 2
GRAND TOTAL	68,747	31,330 12 11	65,967	28,909 13 3	74,892	34,208 1 3	71,664	29,329 12 10	82,197	33,427 12 11

STATEMEMT showing the Revenue derived from Stamps in the District of the Northern Division of *Arcot*, for the last Ten Fuslies, or from 13th July 1824 to 12th July 1834, &c.—*continued.*

DESCRIPTION OF PAPERS.	Fusly 1239. 7.		Fusly 1240. 8.		Fusly 1241. 9.		Fusly 1242. 10.		Fusly 1243. 11.	
	Roll.	*Rs. a. p.*	*Roll.*	*Rs. a. p.*	*Roll.*	*Rs. a. p.*	*Roll.*	*Rs. a. p.*	*Roll.*	*Rs. a. p.*
Judicial papers, exclusive decree	12,006	18,037 8 –	11,148	14,344 – –	9,942	12,575 – –	7,867	11,756 – –	8,636	9,172 – –
Puttah and moochelecah of sayer rent	9	30 – –	43	490 – –	199	937 – –	202	1,387 – –	55	174 – –
Papers of money transaction	5,712	3,126 3 –	5,511	2,997 – –	5,378	2,805 – –	5,130	2,765 12 –	4,589	2,410 – –
Total	17,727	21,194 – –	16,702	17,831 – –	15,519	16,317 – –	13,199	15,909 – –	13,280	11,756 – –
Europe decree papers, applicable solely for judicial purposes	1,240	958 8 –	1,255	1,082 – –	875	606 8 –	837	629 8 –	604	415 – –
Land customs rowannahs	57,247	11,282 5 –	56,672	10,764 4 –	51,601	9,788 8 –	56,460	10,156 4 –	47,642	7,983 8 –
Abkarry licenses	—	—	—	—	—	—	—	—	—	—
Cadjans	25	10 12 –	8	5 8 –	- -	- - -	4	2 – –	1	– 4 –
Penalty	- -	3,130 – –	- -	1,037 8 –	- -	1,627 8 –	- -	1,650 – –	- -	990 – –
Recovered from paupers	- -	169 5 11	- -	86 3 11	- -	6 6 9	- -	244 5 3	- -	56 9 5
Commission refunded	- -	37 – 8	- -	- - -	- -	- - -	- -	- - -	- -	92 – –
Fraction	—	—	—	—	—	—	—	—	—	—
Security papers of thaseeldars, &c.	- -	- - -	- -	- - -	- -	- - -	- -	- - -	- -	16 – –
Total	- -	37 – 8	- -	- - -	- -	- - -	- -	- - -	- -	108 – –
GRAND TOTAL	76,239	36,781 15 7	74,637	30,806 7 11	67,995	28,345 14 9	70,500	28,591 1 3	61,527	21,309 5 5

(*continued*)

STATEMENT showing the Revenue derived from Stamps in the District of the Northern Division of *Arcot* for the last Ten Fuslies, or from 13th July 1824 to 12th July 1834, &c.—*continued.*

DESCRIPTION OF PAPERS.	Comparison between Fuslies 1234 in No. 2, and 1235 in No. 3.		Comparison between Fuslies 1234 in No. 2, and 1236 in No. 4.		Comparison between Fuslies 1234 in No. 2, and 1237 in No. 5.		Comparison between Fuslies 1234 in No. 2, and 1238 in No. 6.		Comparison between Fuslies 1234 in No. 2, and 1239 in No. 7.	
	Increase. 12.	Decrease. 13.	Increase. 14.	Decrease. 15.	Increase. 16.	Decrease. 17.	Increase. 18.	Decrease. 19.	Increase. 20.	Decrease. 21.
	Rs. a. p.	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
Judicial papers, exclusive decree	1,772 12 –	- - -	1,593 4 –	- - -	- - -	1,721 – –	1,160 – –	- - -	4,786 8 –	—
Puttah and moochelecah of sayer rent	- - -	43 – –	155 – –	- - -	526 – –	- - -	18 – –	- - -	- - -	932 – –
Papers of money transaction	- - -	2,138 6 –	- - -	2,103 6 –	- - -	2,108 8 –	- - -	1,752 – –	- - -	1,357 8 –
Total	1,772 12 –	2,181 6 –	1,748 4 –	2,103 6 –	526 – –	3,829 8 –	1,178 – –	1,752 – –	4,786 8 –	2,289 8 –
Europe decree papers applicable solely for judicial purposes	491 8 –	- - -	726 – –	- - -	310 – –	- - -	546 8 –	- - -	416 – –	—
Land customs rowanahs	876 15 –	- - -	3,850 11 –	- - -	3,442 8 –	- - -	4,616 3 –	- - -	2,732 5 –	—
Abkarry licences	- - -	880 – –	- - -	880 – –	- - -	880 – –	- - -	880 – –	- - -	880 – –
Cadjans	- - -	115 12 –	- - -	37 4 –	- - -	118 8 –	- - -	131 4 –	- - -	137 4 –
Penalty	- - -	350 – –	- - -	80 – –	522 8 –	- - -	521 4 –	- - -	2,780 – –	—
Recovered from paupers	- - -	2,023 11 3	- - -	421 11 3	- - -	1,954 6 10	- - -	2,058 8 6	- - -	1,973 5 4
Commission refunded	- - -	10 3 4	77 4 10	- - -	- - -	16 8 –	60 – 2	- - -	19 9 8	—
Fraction	- - -	1 2 1	- - -	2 10 3	- - -	3 1 3	- - -	3 2 8	- - -	3 2 8
Security papers of thaseeldars, &c.	—	—	—	—	—	—	—	—	—	—
Total	- - -	11 5 5	77 4 10	2 10 3	- - -	19 9 3	60 – 2	3 2 8	19 9 8	3 2 8
GRAND TOTAL	3,141 3 –	5,562 2 8	6,402 3 10	3,524 15 6	4,801 – –	6,802 – 1	6,921 15 2	4,824 15 2	10,734 6 8	5,283 4 –
NET	- - -	2,420 15 8	2,877 4 4	- - -	- - -	2,001 – 1	2,097 – –	- - -	5,451 2 8	—

STATEMENT showing the Revenue derived from Stamps in the District of the Northern Division of *Arcot*, for the last Ten Fuslies, or from 13th July 1824 to 12th July 1834, &c.—*continued.*

DESCRIPTION OF PAPERS.	Comparison between Fuslies 1234 in No. 2, and 1240 in No. 8.		Comparison between Fuslies 1234 in No. 2, and 1241 in No. 9.		Comparison between Fuslies 1234, in No. 2, and 1242 in No. 10.		Comparison between Fuslies 1234, in No. 2, and 1243 in No. 11.		TOTAL OF COMPARISON.		NET.	
	Increase. 22.	Decrease. 23.	Increase. 24.	Decrease. 25.	Increase. 26.	Decrease. 27.	Increase. 28.	Decrease. 29.	Increase. 30.	Decrease. 31.	Increase. 32.	Decrease. 33.
	Rs. a.	*Rs. a. p.*	*Rs. a.*	*Rs. a. p.*	*Rs. a.*	*Rs. a. p.*	*Rs. a.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*	*Rs. a. p.*
Judicial papers, exclusive decree	1,093 –	- - -	- - -	676 – –	- - -	1,494 12 –	- - -	4,079 – –	10,405 8 –	7,970 12 –	—	—
Puttah and moochelecah of sayer rent	- - -	472 – –	- - -	25 – –	425 –	- - -	- - -	788 – –	1,124 – –	2,260 – –	—	—
Papers of money transaction	- - -	1,487 – –	- - -	1,679 – –	- - -	1,718 4 –	- - -	2,074 – –	- - -	16,418 – –	—	—
Total	1,093 –	1,959 – –	- - -	2,380 – –	425 –	3,213 – –	- - -	6,941 – –	11,529 8 –	26,648 12 –	- - -	15,119 4 –
Europe decree papers applicable solely for judicial purposes	539 8	- - -	64 –	- - -	87 –	- - -	- - -	127 8 –	3,180 8 –	127 8 –	3,053 – –	—
Land customs rowanahs	2,214 4	- - -	1,238 8	- - -	1,606 4	- - -	- - -	566 8 –	20,577 10 –	566 8 –	20,011 2 –	—
Abkarry licences	- - -	880 – –	- - -	880 – –	- - -	880 – –	- - -	880 – –	- - -	7,920 – –	- - -	7,920 – –
Cadjans	- - -	142 8 –	- - -	148 – –	- - -	146 – –	- - -	147 12 –	- - -	1,124 4 –	- - -	1,124 4 –
Penalty	687 –	- - -	1,277 8	- - -	1,300 –	- - -	640 –	- - -	7,728 12 –	430 – –	7,298 12 –	—
Recovered from paupers	- - -	2,056 7 4	- - -	2,136 4 6	- - -	1,898 6 –	- - -	2,086 1 10	- - -	16,608 14 10	- - -	16,608 14 10
Commission refunded	- - -	17 7 –	- - -	17 7 –	- - -	17 7 –	74 9	- - -	231 7 8	79 – 4	152 7 4	—
Fraction	- - -	3 2 8	- - -	3 2 8	-	3 2 8	- - -	3 2 8	- - -	25 13 7	- - -	25 13 7
Security papers of thaseeldars, &c.	- - -	- - -	- - -	- - -	- - -	- -	16 –	- - -	16 – –	- - -	16 – –	—
Total	- - -	20 9 8	- - -	20 9 8	- - -	20 9 8	90 9	3 2 8	247 7 8	104 13 11	168 7 4	25 13 7
GRAND TOTAL	4,534 4	5,058 9 –	2,580 –	5,564 14 2	3,418 4	6,157 15 8	730 9	10,752 – 6	43,263 13 8	53,530 12 9	30,531 5 4	40,798 4 5
NET	- - -	524 5 –	- - -	2,984 14 2	- - -	2,739 11 8	- - -	10,021 7 6	- - -	10,266 15 1	- - -	10,266 15 1

Chittoor, 16th April 1835.

(E. E.)

(signed) *Charles Roberts,*
Principal Collector Northern Division of Arcot.

No. 7.
On Stamps.

From *J. Blackburne*, Esq. Principal Collector, Madura, to the Superintendent of Stamps, Fort St. George.

Sir, Madura, 23 March 1835.

1. I HAVE the honour to acknowledge the receipt of your letter of the 9th instant, accompanied by a statement of sales of stamp paper, &c. for the last 10 years in this district, showing a decrease of *Rs.* 8,193. 10 *a.*; but I should think it ought not to be matter of surprise when the following reasons are considered.

Europe and country paper, for judicial and revenue purposes, are the most in demand.

	Rs.	*a.*
The sales, in fusly 1234, amounted to - - -	10,038	14
But in fusly 1243 were only - - - -	6,312	12
Decrease - - - *Rs.*	3,726	2

The reason of this is solely attributable to the Regulations enacted by Government subsequently to fusly 1234. Regulation II. of 1825 prescribes that petitions to the Board, and bonds for value to the amount of from 16 to 64 rupees, can be written on unstamped paper, and cancelled that part of Regulation XIII. of 1816, which provided that no documents other than stamped paper should be admitted in the courts, a restriction which induced all engagements, &c. to be written on stamped paper. Hence, dealers and merchants, feeling quite at liberty to take vouchers on unstamped paper, paying the penalty only when occasion led them to go to law, they naturally adopted the lighter tax.

2. Regulation VII. of 1829 cancelled the necessity of stamped paper for sayer rent, puttahs, and moochelkahs. Formerly bonds were taken from renters' securities for one month's kist, and ready-money deposit was made for another; now for these last three years the renters have generally deposited two months' kist, and thereby avoided the necessity and expense of security bonds.

3. A great number of suits, formerly cognizable by the civil courts, have been, by Regulation IV. and VI. of 1831, made cognizable by summary tribunals. Sums to a large amount were formerly decided in the Judge's court; but within the last 10 years they have practically become cognizable by district moonsiffs, where stamped paper not being used, the amount sales are diminished. The decreased number of decrees in the Judge's court has caused a correspondent decrease in the sale of Europe decree papers.

4. If the decrease in the sale of land customs rowanahs had been in proportion to the decrease in the sayer rents, which have fallen off owing to articles subject to duty having been less productive from the failure of rain in the last four years, it would be matter of little consequence; but, on the contrary, the decrease is much greater, so much, that it attracted my attention on my arrival in this district. The per-centage of decrease in the sayer rent, between fuslies 1234 and 1243, is only 12 per cent.; but in the sale of land customs rowanahs, during the same period, the decrease is no less than 43¾ per cent. An inquiry into the reasons showed me that the renters made it a practice to withhold rowanahs for articles destined for consumption within the limits in which they are produced, and, giving plain cadjans instead, appropriate what ought to be a Government receipt from stamps to their own use, in order to cover the losses they sustain by their emulation to secure the rent; that articles destined for consumption beyond the chokey limits are generally at first entered in the accounts as destined for consumption within the limits; and a day or two afterwards a mafee rowanah is issued, signifying that they had paid duty for consumption, but were not destined for places beyond the chokey limits. The value of rowanahs, so withheld, also becomes a perquisite to the renters. On discovery I fined four of the renters, and have given strict orders to examine the accounts, so as to prevent a recurrence of the kind. By this arrangement I have an increase at this moment of 800 rupees above last year. The false accounts furnished by the renters are the only ones on which we have to depend; there are no others whereby to check them. If the duty collected on articles designed for Woolmadeevoo (the place where made) consumption be omitted in the accounts, it is scarcely possible to find out the number of rowanahs which

which should have been sold on that account; therefore the substitution of stamped for mafee rowanahs seems one of the best means to prevent renters deriving the undue benefit which they now have in the issue of mafee rowanahs to limits beyond their rents. To prevent frauds on collection of the value of rowanahs not issued for articles designed for consumption within the chokey limit, it would be advisable that a gomastah be appointed by the collector to each chokey, to make the renters to issue rowanahs for all articles.

5. The sales of sea customs vary little, and the revenue is very trifling.

6. The use of stamped paper for abkarry licences has been abolished by Regulation II. of 1825.

7. Tobacco licences are not usual in this district.

8. The necessity to use stamped cadjan bonds for small sums has been abolished by Regulation II. of 1825.

9. Penalties are collected on unstamped documents produced in courts to so great an extent, as to prove that unstamped documents prevail very greatly in dealings where parties do not anticipate necessity to go to law.

10. My little experience leads me to believe the power of enabling natives to dispose of their property by will is uncalled for, and would not be taken advantage of except by persons of overgrown fortunes and of disreputable characters, and to the latter it would be little desirable to facilitate the means.

11. These are the causes that have operated to cause a decrease of stamped revenue, and not frauds in the department entrusted with the sale of the stamps.

Since my arrival in the district, I have twice called for and examined the stamped papers in possession of the venders for sale, and found the balance on hand to correspond with the accounts.

12. Five per cent. commission of the sales, as usually given, is sufficiently adequate; any higher remuneration cannot tend to increase the sales.

13. Land customs rowanahs being on stamped paper, is very requisite to preserve the revenue, and prevent frauds; if unstamped rowanahs be ordered to be used, great frauds and annoyance must naturally be occasioned both to the collector and to the renters.

14. To increase the sale in stamped paper, it would be necessary to impose the stamp duties on causes transferred by the Regulations from the judges to the collectors and punchayets; and this will prevent numerous false complaints, which the people are led to make in consequence of no restriction being imposed on them.

15. In the concluding paragraph of your letter, you observe (an observation at variance with your own statement), that in every item of the stamp revenue the decrease has been considerable in my district. In two out of seven it is considerably increased, and in a third it is only lower because any receipt on account of that item is now prohibited by the Regulations.

(signed) *J. Blackburne*,
Principal Collector.

(No. 170.)

From *J. Blackburne*, Esq. Principal Collector, Madura, to the Superintendent of Stamps, Fort St. George.

Sir, Madura, 14 April 1835.

In reply to your letter of the 8th instant, requiring a particular report on the measures in which the 5 per cent. commission on stamps is distributed, and the result of my native officers' reports on the causes which have affected the stamp revenue; I have the honour to inform you, that the agent is allowed 5 per cent. on stamps sold by him, and 3 per cent. on the vender's sales, and the venders 2 per cent. on their sales, which, amounting separately to a very trifle, has latterly been added to the vender's commission.

2. Your second query has already met with as full an answer as I am capable of affording, in the various paragraphs of my letter of the 23d ultimo. From your calling again for that information, I must conclude either that you have not understood my letter, or that I do not understand your question.

(signed) *J. Blackburne*,
Principal Collector.

No. 7.
On Stamps.

From *T. V. Stonhouse*, Esq. Principal Collector, Nellore, to the Superintendent of Stamps, Madras.

Nellore, Principal Collector's Cutcherry,
8 June 1835.

Sir,

1. I REGRET that press of business has prevented my furnishing at an earlier period the report called for in your letter of the 9th March last.

2. The statement furnished with your letter exhibits a net decrease on the total gross revenue from stamps, during the last ten years, of *Rs.* 7,753. 9 *a.*; the chief decrease being in the sale of paper applicable for revenue and judicial purposes. The average sale of these papers during the first three years of the period exhibited in the statement is, in round numbers, 9,601 rupees, the average of the last three years being 5,319 rupees. The chief cause which has operated to produce such a result is the establishment of a separate court at Guntoor, to which was of course transferred the sale of stamp paper required for judicial proceedings by parties in that district. This took place in fusly 1237, and since that fusly the decrease has chiefly occurred. It appears to me, also, that the sale of these kind of papers must in some degree depend upon the quantum of business done in the zillah court, in fact the number of suits decided in the course of the year.

*Fusly 1241, 1242, 1243.
†Fusly 1234, 1235, 1236.

3. In the sale of custom rowanahs, the average of the last three* years only falls short of the average of the first three † years by 67 rupees. In the last fusly (1243) the decrease was considerable, which is attributable partly to the unfavourable seasons which have been experienced, and which have depressed trade, as well as every other branch of industry; and partly, I have reason to think, to frauds committed by the sayer renters, in issuing maufre instead of stamp rowanahs. I have taken measures to put a stop, as far as possible, to such practices.

Orig.

4. Of the 5 per cent. commission, 2 ½ per % is allotted to the stamp darogah at the hoozoor, who is charged with the custody of the stock of stamps, and the issue of them as required to the venders; the remaining 2 ½ per cent. is allowed to the venders upon the extent of their sales respectively, sea custom rowanahs excepted, as these are not furnished to them for sale, but forwarded direct from the hoozoor to the sea-ports; on these rowanahs the stamp darogah draws the whole 5 per %. I am not prepared to recommend a modification of that rate of distribution which has hitherto obtained. The remuneration the venders receive appears to me sufficient; for the little trouble they have especially as in this district, all the venders, excepting the one at the zillah court, are public servants, being either talook goomastahs, post-office writers, &c.

5. The exempting custom rowanahs altogether from stamp duties would be a relief to trade, but the deficiency in the revenue occasioned thereby could only be made up by an alteration in the rate of duties, which would incorporate into one payment the duty on the goods and the stamp duty payable on the rowanah. This would of course be no relief to the trader, as it would be a mere commutation of the mode of payment. I do not clearly understand if your impression is that the deficiency in the revenue from the exemption of stamp duty on custom rowanahs might be made good by rendering it obligatory on natives that testamentary deeds should be written on stamp paper, and also by giving effectual operation to the law which requires receipts to be on stamp paper. I fear that such an exception would prove fallacious. Wills are unknown in Hindoo law. In practice they are seldom resorted to, except perhaps in the disposal of zemindary property, and the provisions of Regulation V. of 1829, appear to me to oppose a bar to the execution of wills becoming at all general. Section 4 of that Regulation in effect directs that the succession to property shall be regulated by the rule of Hindoo law, and it must be superfluous, therefore, to execute a will to direct what the Hindoo law and the Government have already declared shall be done. This Regulation appears to me therefore to nullify the intention of a will, which is, in fact, a bequest of property according to the wishes of the testator. For these reasons I do not think it can ever be expected that the practice of making wills will ever become very general at this presidency, still less so if chargeable with a stamp duty.

6. In regard to giving effectual operation to the Regulation which requires receipts to be executed on stamp paper, I would observe that natives in their ordinary transactions do not usually give or take receipts; but were it otherwise the provisions of section 3, Regulation II. of 1825, would be calculated to counteract its becoming

becoming a general practice. This section provides, that although the instrument may not have been executed on stamp paper, it may be admitted in evidence on payment of ten times the amount of stamp duty which should have been paid in the first instance. Questions as to the authority of receipts in the transactions of natives with each other, are cases which rarely, if ever, come before the courts; and when they do, the parties have a remedy should the instruments not have been executed upon stamp paper. If it be desirable, therefore, to bring into more general practice the executing receipts on stamp paper, it appears to me that section 3, Regulation II. of 1825 should be modified; but I am not of opinion that such a step would be advisable.

(signed) *T. V. Stonhouse,*
Principal Collector.

From *T. M. Lewin,* Esq. Collector, Guntoor, to the Superintendent of Stamps, Fort St. George.

Guntoor Collector's Cutcherry, Rapully,
Sir, 7 April 1835.

1. I HAVE the honour to acknowledge the receipt of your two letters, dated the 9th and 25th ultimo. You have correctly, in the 7th paragraph of the first, imputed to the peculiar condition of this district, the falling off of revenue shown by the statement which accompanied it; and it would be idle to suggest any other than the universal and predominating influence to which you have alluded.

2. From the revenue derived from stamps in this district having been for a series of years marked by very trifling variation in amount, it seems evident that it must be now subject to some powerful and universal influence, and this is no less manifest from its decline bearing a proportion to the decline of the revenue at large, on which it seems mainly to depend.

3. It does not appear to me that any apprehension can be justly entertained of fraud on the part of the stamp venders, as they are subject to strict surveillance, and any amount of stamps traced to their possession would be immediately realized, if the stamps themselves were not forthcoming; an instance of the latter occurred very recently.

4. Except for rowanahs' and courts' proceedings, which will bear respect to its general wealth and resources, the stamp revenue can never in this district, circumstanced as it now is, become an object of great consideration. Land being the property of the sirkar, or amassed in the hands of large proprietors, the right of occupation, if admitted, being rarely saleable, conveyances and mortgages seldom or ever take place; and commercial intercourse, except within the district, being inconsiderable, which gives rise to no engagements beyond the passing season, does not call for written deeds; legal instruments have in consequence ever been uncommon, and few transactions take place among the inhabitants which seem to require them. In short, the stamp revenue in this district seems little liable to any influence, but such as may be found in circumstances immediately calculated to raise or depress the revenue at large.

5. The distribution of the stamp commission is as follows:

To the collector - - - - - -	5 per cent.
To the darogah on sales effected by himself -	- 5 per cent.
To ditto, on sales by ordinary venders -	- - 5 per cent.
To venders, on sales effected by them -	- - 3 per cent.
	18 per cent.

6. When the amount which goes to two individuals out of this commission is considered, it seems obvious that the balance divided among 63 persons (the number now intrusted with the sale of stamps) could not operate as a stimulus of a very urgent character. The commission received in each case is a small remuneration for any species of trust; but were it much greater, would be inoperative as a stimulus, as the amount of revenue has little or no relation to the exactions of the vender.

I can discover no advantage in the proposition to exempt custom rowanahs from duty, and think the argument which favours their exemption, equally appli-

No. 7
On Stamps.

cable to the custom duty itself, which of all taxation is the most unexceptionable, as capable of affecting but one class of individuals, viz. the consumer; the stamp is paid for with the custom duty, and if a pass must be obtained under seal and signature, it matters not whether it be on stamp or plain paper; it is obvious that the producer and the merchant are both exempt from its influence, and the latter, who advances it, will be sure to add it to the price of his goods. Unless, therefore, it can be shown that the levying this tax is a distinct source of vexation to parties engaged in trade, there is no object to be gained by its repeal. I should rather look to relieve commerce and the government, by excluding from the tariff all articles yielding an amount of revenue too insignificant to make them worthy of attention as objects of revenue, and from a reduction of establishment consequent on the measure.

It may happen that the addition of the stamp to the ordinary impost, in some cases, impedes both commerce and production, by being placed on an article not in sufficient requisition to admit of its bearing the two united; but the principle is not touched by this, as the rowanah cannot be viewed in any other light than a custom duty; the difference seems wholly to consist in the name.

Should it be determined to abandon the stamp as a source of revenue, the invention of a substitute is not within any means in a country already taxed higher than is consistent with its welfare. I should find it difficult to come to an alternative less detrimental; it may be said of this tax above all others, that if the tariff is well regulated, it cannot have the effect either of checking production, or of obstructing commerce; in this it surpasses the land tax of India, which operates as a tax on raw materials, and will ever be found capable of keeping the country in a condition of indigence.

As to the tax on wills, it has always appeared to me that the regulation which exempted them from the stamp was a most wise enactment, not less than a most just one; it is needless to enter on a discussion of the *pros* and *cons* of this mode of taxation, as you are doubtless acquainted with them all. I will therefore only add my opinion, that there is no species of taxation more unjust in principle, nor in practice more injurious; the proposition is however so general, that it is not easy to reply to it, whether it is proposed to levy a penalty on the party who devises property, or to fine an individual for possessing it. In each case it is unjust. It seems a sufficient objection to this tax that it is calculated to make the state the eventual possessor of every species of property which falls under its provisions. Moreover its object is ever liable to be defeated; there seems no reason why an individual should be able to part with his property in life, which he must be taxed for if separated from him by death. It must however be admitted, that the tax has the sanction of great antiquity, though I never met with any better defence of it than its great pecuniary result.

The propriety of legislating a change calculated to subvert the ancient laws of inheritance of the country, with no better object in view than fiscal exaction, appears to me more than questionable. Before passing a general enactment, giving the power of devising property, it is at least necessary to be shown that it is wished for, and that it would be for the benefit of the parties to be affected by it.

The prominent causes of failure in the stamp revenue I consider the enactment which renders plain paper available for deeds, subject to a fine when used; if, as has been said, not more than one deed in a hundred finds its way to a court, it is not surprising that a revenue secured by a decimal proportion of protection should decline, and that stamp paper for legal instruments should fall into desuetude, and such I apprehend has been the case more or less throughout the country.

(signed) *T. M. Lewin*,
Collector.

No. 7.
On Stamps.

(No. 26.)

From *A. Maclean*, Esq. Collector, Canjeram, to the Superintendent of Stamps, Fort St. George.

Sir, Canjeram, 20 September, 1835.

1. In reply to your letter of the 9th ultimo, relative to the stamp revenue, I have to acquaint you that the decrease in this branch of the revenue in the last fusly had, previous to its receipt attracted my notice, and also that on an examination of the stock of stamped papers on hand it was found correct, and agreeing with the accounts of the respective venders.

2. The decrease in fusly 1243 was explained to the Board of Revenue in my Jummahbundy Report,* on the extra revenue of that year, an extract of which is subjoined for your information. *24 October 1834.

"The revenue from stamps amounts to *Rs.* 8,398. 13 *a.*, and falls short of that of fusly 1242 in the sum of *Rs.* 4,291. 11 *a.*, as hereunder shown:—

	Fusly 1242.			Fusly 1243.			Decrease.		
	Rs.	*a.*	*p.*	*Rs.*	*a.*	*p.*	*Rs.*	*a.*	*p.*
Sale of Sayer Rowanahs - - - -	4,195	–	–	3,210	5	–	984	11	–
Ditto stamped papers at Chingleput -	6,306	4	–	3,354	12	–	2,951	8	–
Ditto stamped papers in other places - -	1,359	–	–	1,242	2	–	116	14	–
Fines collected by the court - - - -	830	4	–	591	10	–	238	10	–
Total - - - *Rs.*	12,698	8	–	8,398	13	–	4,291	11	–

"The decrease in the sale of sayer rowanahs, accounted for by the value of those purchased in advance by the sayer renters during fusly 1242, having been fully disbursed in the accounts of that year, whereas in fusly 1243 those only which were actually sold by the sayer awineenahs have been charged. The amount value of the paper misused,* and therefore returned by the renters of fusly 1242, was 480 rupees, which being deducted from the sales of that year, the result is 3,715 rupees; out of the quantity returned in fusly 1243 by the renters of fuslies 1241 and 1242, amounting in value to 810 rupees, most part has been already sold for *Rs.* 779. 8 *a.*, which sum being added to the sales on account of fusly 1243, viz. *Rs.* 3,210. 5 *a.* gives a corresponding rise as well as an increase over the actual result of fusly 1242, of *Rs.* 271. 13 *a.* instead of the apparent decrease shown above. *Original.

"With respect to the decrease in the sale of stamp paper on account of the zillah court of Chingleput, it appears on particular inquiry to be attributable to the non-translation into the native languages of certain decrees passed by the judge and register, amounting in number to about 300. The non-translation of these judgments, by precluding the possibility of appeals being instituted, creates a temporary loss of revenue, which however it is expected will hereafter be recovered."

3. Another circumstance has lately been the cause of a further decrease in the sale of stamped papers, which it may not be out of place to notice. It formerly was the practice for parties in civil suits to apply for and obtain from the records of the collector and magistrate and his assistants, on stamped papers, attested copies of documents material to their success, for production before the Courts* of Adawlut; but the judge has lately, I understand, interdicted their doing so, substituting summonses to me requiring the production of all original documents named by them. The intention of the judge is, doubtlessly, to check the unlimited production of unnecessary documents; but it is, I conceive, unusual for the judge to cause in the first instance the production of all documents required by private parties, with a view to decide what shall be admitted and what not, in the different Adawlut Courts of the zillah. The practice, moreover, throws much additional labour on me and my establishments (independent of the loss of revenue), for I received on one day no less than five summonses. The object of the judge would be attained as well by the simple rejection after production by the parties themselves, of all documents which he or the other presiding officer may not consider material to the points at issue in the suit. * Sec. 22, Reg. XIII. of 1816.

4. The untranslated decrees alluded to above are now, however, in progress of translation

No. 7. On Stamps.

translation in the zillah court, and the sale of stamped paper on that account is proportionately increasing in the current fusly.

5. The sale of judicial papers from fusly 1231 to 1240 was extensive; but on the establishment of a separate court at Cuddalore for the southern division of Arcot, there was naturally a falling off, and a still further diminution has been the consequence of the recent extension of the jurisdiction of district moonsiffs, whereby the number of suits on the judge's file is reduced, and consequently the use of stamped paper (which is not required in the subordinate courts) has become unnecessary.

6. The exemption of custom rowanahs from stamp duty is hardly called for. Its imposition does not seem to bear heavily on commerce, nor would the substitute hinted at by you cover one-fourth of the large revenue derived from the former source. Section 4, Regulation II. of 1825 provides that wills need not be written on stamped paper. The custom of disposing of property by will is scarcely known to natives in the interior, nor is it necessary that they should resort to it, their property being liable to partition among their heirs and relatives under the provisions of the law of inheritance.

7. The only agents who have in their power to dispose of stamped paper to a considerable extent, are the darogah in the hoozoor, and the vender at Chingleput. For information regarding the distribution of the commission, I beg to refer you to the annexed copy of a letter to the Board of Revenue.

8. You are aware that some of the regulations which required that petitions, &c. addressed to the revenue authorities, as well as that certain other documents should be written on stamped paper, have been rescinded by subsequent enactments; nor can I suggest any other means of improving the stamp revenue, save the strict enforcement of such parts of the law which require receipts, security bonds, deeds regarding manium lands, &c. to be written on stamped paper, but which are not supposed to operate fully in practice. On the whole it does not appear to me, that constituted as society is in India, the stamp duty is at present an improvable source of revenue.

Vide Sections 11 & 12, Reg. XIII, of 1816.

(signed) *A. Maclean*, Collector.

From *A. Malcolm*, Esq. Collector, Sadras, to the Secretary to the Board of Revenue.

Sir, Sadras, 30 October 1834.

I HAVE the honour to acknowledge the receipt of Mr. Porter's circular letter of 16th ultimo, and to state that a commission of 5 per cent. on the gross produce derived from the sale of stamps, is divided between the darogah at the hoozoor cutchery, and the venders at out stations, appointed under clauses 4 and 6, section 13, of 1816, according to their respective proportions. With the exception of the vender at Chingleput, the whole of those at out-stations are in receipt of public pay unconnected with the sales of stamps, and none of the latter derive more than an average profit of one rupee per mensem. The remuneration of the hoozoor darogah varies from 22 to 35 rupees per mensem, whilst that of the vender at Chingleput never exceeds 14 rupees per mensem, and falls sometimes as low as 5 rupees per mensem. I recommend both of these cases to the favourable notice of the Board, as I think the pay of the hoozoor darogah ought never to be less than 35 rupees, and that of the Chingleput vender less than half that amount per mensem, to be paid either by salary or partly by commission and salary, as may be deemed advisable. The case of the other venders does not seem to require any consideration at present.

(signed) *A. Malcolm*, Collector.

From *J. A. Hudleston*, Esq. Deputy Collector in Charge, to the Superintendent of Stamps, Fort St. George.

Sir, Madras Cutcherry, 6 June 1835.

1. I HAVE the honour to acknowledge the receipt of your letter, under date the 9th March last.

Para. 3.

2. It is customary in this office to compare occasionally the quantity of stamps on hand with the accounts of the vender, although the stock is secured at the cutcherry

cutcherry treasury, and such precautions are used as to prevent the practice of fraud. No. 7. On Stamps.

3. The vender in this district, the only person conducting the sale of stamps, draws the full commission of five per cent., there being no separate darogah, as in the provinces. I am not aware of any other mode of exciting the vender's zeal than by continuing to him the whole amount of the authorized commission of five per cent., which, from the sales not being extensive, is not more than necessary to ensure diligence and activity on his part. If it is found that the vender has been neglectful in his duty, it is only requisite to appoint another person in his stead to remedy the evil.

4. It does not appear to me that the stamp duties on customs rowanahs operate as a hardship on the mercantile community. The revenue under this head is so small compared with the extent of the inland trade, that I would suggest the continuance of the present system; but I am by no means prepared to recommend that bequests by will should be subject to a stamp duty, which, besides its being generally repugnant to the feelings of the inhabitants of Madras, would be ineffectual within the limits of the Supreme Court, under the existing state of things. Para. 5.

5. I apprehend that the rules now in force at Calcutta respecting stamps cannot be extended to this collectorate, excepting with the special sanction of the Supreme Court. If, however, by any future legislative enactment, the use of stamps in the case of receipts and other vouchers within the jurisdiction of that court is made compulsory, to render them valid in law, I shall be prepared to draw up rules and regulations, with a view to the improvement and security of the revenue derivable from this source. Paras. 6 & 7.

6. At present there is every facility afforded to persons requiring stamps from this office, and it is therefore fair to conclude that the decrease noticed by you arose from causes beyond control.

(signed) *J. A. Hudleston,*
Deputy Collector in Charge.

From *Findlay Anderson*, Esq. Acting Sub-collector in Charge, Canara, to the Superintendent of Stamps, Fort St. George.

Canara, Principal Collector's Cutcherry,
Sir, Mangalore, 17 June 1835.

1. I HAVE the honour to reply to your circular letter of the 9th March, regarding the falling off of the revenue from stamps during the last ten fuslies.

2. Immediately upon the receipt of that letter, I directed all the stores of stamps to be examined, and, with the exception of one chowkie, at which one paper was found missing, and the value of which has been made good by the moongar, they were found to be correct.

3. I may premise my remarks as to the cause of the decrease in the stamp revenue in the zillah, by observing that the proceeds arising from it have fluctuated annually, without either considerable increase or decrease, since fusly 1236. The decrease in that fusly, when compared with the two previous ones, is to be attributed in a considerable degree, first, to the enactment of Regulation II. of 1825; secondly, to the abolition of inland chowkies in this zillah, in fusly 1235; and, lastly, to the admission of abkaree licences being written on stamped paper.

4. A reference to the accompanying Statement, in which is exhibited an account of the sales of the Europe and country stamp paper, applicable for judicial and revenue purposes in the different talooks, shows at once, by the comparative excess of the sales in the Mangalore, Honore, and Soonda talooks, that the greater proportion of that paper is purchased for judicial purposes. The auxiliary court at Honore was established in June 1236, and that of the native judges in Soonda about June 1239; and the difference of the sales of stamped paper in these talooks before and subsequent to the establishment of these courts, is distinctly seen. No. 1.

Stamp papers of greater value than eight rupees are rarely used in this district for bonds, deeds of sales, &c. The accompanying Statement shows the sale at the three court stations of papers above the value of 16 rupees, and the amount arising therefrom will be found to form a considerable proportion of the whole revenue from that class of stamps, and these are supposed to have been used solely for judicial purposes. No. 2.

No. 7. On Stamps.

5. In order to obtain, therefore, a satisfactory explanation of the cause of an increase or decrease in the stamp revenue, reference must be made to the files of suits in the zillah courts, according to which it will be found to fluctuate. The number of suits filed in the zillah court of Mangalore, in 1825, greatly exceeded the number filed in any subsequent year. A satisfactory cause, coupled with the reasons mentioned above, is therefore found for the excess in the sales of stamps in this zillah during that year. In 1829 and 1830 there were a greater number of suits decided in the court than in the immediately preceding and following years, and the stamp revenue was proportionably increased.

6. The enactment of Regulation II. of 1828, which reduced the institution fees of suits before the district moonsiffs, has also tended to reduce, in a small degree, the sale of stamp paper for judicial purposes; for persons, previously, sometimes preferred filing their suit in the zillah court, though, from its amount, it might have been cognizable by the district moonsiff. The extension of the jurisdiction of the district moonsiffs, authorized by Regulation III. of 1833, will, it is expected, further reduce the sale of stamp papers.

7. The decrease in the sales of cadjans is owing to stamp Europe paper having been partially used in their stead, since fusly 1240, for the execution of deeds of sale, &c.

8. The decrease in the sayer rowannahs is owing to the abolition of inland chowkies in this district, in fusly 1235. The amount of sales in the subsequent years has varied according to the extent of trade.

9. The decrease in the sea custom rowannahs, since fusly 1237, is owing to the orders received in fusly 1236, making it optional with importers or exporters of goods to take rowannahs or not, as they pleased.

10. With reference to the 4th paragraph of your letter, I have the honour to state, that of the five per cent. commission, 2 ½ is allowed to the darogah, and 2 ½ to the venders. I do not consider any change in this mode of distribution advisable. In consequence of the darogah being absent on leave from the district; and the vender of the Mangalore talook having lately died, I am unable to furnish you with their reports. The latter is the only person who would have been able to have furnished any useful information.

11. The exemption of custom rowannahs from stamp duties would cause a considerable loss to Government, and I do not think that the benefit to the merchants would be equivalent. It is optional with them to take rowannahs or not, on account of the duty paid by them, and importers having no occasion for rowannahs do not do so. Exporters are obliged to take rowannahs when their goods are exported to a British port, and sometimes pay one anna, the price of the rowannah, for goods paying the same amount of duty. This is undoubtedly a hardship, and it might be removed by establishing a rule, that certificates on unstamped paper should be granted for goods of the value of 10 rupees or under.

12. It does not appear to me to be advisable that the present law regarding receipts should be changed; and I am not at present prepared to offer any suggestions for raising the revenue derived from stamps.

I have, &c.
(signed) *Findlay Anderson*,
Acting Sub-collector in Charge.

STATEMENT showing the TALOOKWAR S

TALOOKS.	REVENUE AND JUDICIAL PAPERS.												
	1234.	1235.	1236.	1237.	1238.	1239.	1240.	1241.	1242.	1243.	1234.	1235.	1236.
	Rs. *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*
Mangalore - -	21,762 4	18,447 8	13,022 4	9,436 8	12,951 12	15,704 4	10,840 4	12,189 12	13,727 8	12,102 –	1,983 –	1,636 8	1,489 12
Bekul - - -	472 8	122 12	85 4	152 4	236 4	134 4	108 12	196 –	198 4	274 8	653 10	328 –	475 12
Buntwal - - -	373 12	147 12	131 4	412 –	261 8	194 8	136 –	304 4	423 12	408 4	450 –	268 12	226 4
Bareoor - - -	742 14	526 –	345 –	316 12	369 12	351 4	216 12	376 8	424 –	455 –	147 4	91 12	146 8
Cundapoor - -	321 8	242 4	240 4	311 8	237 –	224 8	259 12	246 –	307 12	227 12	- -	- -	- -
Honore - - -	429 2	286 –	418 –	2,793 4	3,142 –	3,019 –	2,734 4	3,329 12	2,889 4	2,477 12	- -	- -	- -
Ankola - - -	347 –	179 8	174 8	168 4	184 –	110 12	210 12	142 12	130 8	123 4	- -	- -	- -
Soopah - - -	135 10	214 4	64 12	84 4	83 4	63 4	61 8	55 12	46 4	41 4	- -	- -	- -
Soondah - - -	433 6	224 12	204 12	249 12	304 8	238 4	943 8	1,004 12	566 –	702 12	- -	- -	- -
Bilglie - - -	144 6	36 –	53 4	98 –	48 12	58 –	47 8	47 8	63 12	29 12	- -	- -	- -
TOTAL - - *Rs.*	25,162 6	20,426 12	14,739 4	14,022 8	17,818 12	20,098 –	15,559 –	17,893 –	18,777 –	16,842 4	3,233 14	2,325 –	2,338 4

TALOOKS.	DECREE PAPERS.												
	1234.	1235.	1236.	1237.	1238.	1239.	1240.	1241.	1242.	1243.	1234.	1235.	1236.
	Rs. *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*
Mangalore - -	739 8	637 –	477 –	249 8	568 –	809 8	537 –	430 –	429 8	450 8	565 7	23 3	- -
Bekul - - -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	625 13	103 12	51 9
Buntwal - - -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	837 5	594 5	495 10
Bareoor - - -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	570 14	252 2	148 5
Cundapoor - -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	545 4	443 7	296 3
Honore - - -	- -	- -	- -	68 –	162 –	66 8	132 –	77 –	197 8	103 –	775 14	328 3	189 14
Ankola - - -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	328 13	38 2	10 7
Soopah - - -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	1,857 7	2,027 13	1,966 8
Soondah - - -	- -	- -	- -	- -	- -	- -	- -	- -	3 –	- -	2,693 1	2,527 4	2,578 12
Bilglie - - -	- -	- -	- -	- -	- -	- -	- -	- -	- -	- -	1,307 6	1,369 8	1,192 13
TOTAL - - *Rs.*	739 8	637 –	477 –	317 8	730 –	876 –	669 –	507 –	630 –	553 8	10,107 4	7,707 11	6,870 1

Mangalore.
17 June 1835.

ale of STAMPS in the District of *Canara*, from Fusly 1234 to 1243.

CADJANS.

1237.	1238.	1239.	1240.	1241.	1242.	1243.
Rs. *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*
945 –	1,214 4	885 12	602 12	492 4	405 12	404 12
577 8	472 8	431 4	361 –	383 12	426 12	505 8
357 –	325 4	281 –	132 4	80 8	108 4	65 4
121 4	98 –	86 –	68 4	56 8	4 4	21 8
- -	12 –	4 8	- -	- -	- -	- -
- -	- -	- -	- -	- -	- -	- -
- -	- -	- -	- -	- -	- -	- -
- -	- -	- -	- -	- -	- -	- -
- -	- -	- -	- -	- -	- -	- -
- -	- -	- -	- -	- -	- -	- -
2,000 12	2,122 –	1,688 8	1,164 4	1,013 –	945 –	997 –

TOTAL.

1234.	1235.	1236.	1237.	1238.	1239.	1240.	1241.	1242.	1243.
Rs. *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*
23,745 4	20,084 –	14,512 –	10,381 8	14,166 –	16,590 –	11,443 –	12,682 –	14,133 4	12,506 12
1,126 2	450 12	561 –	729 12	708 12	565 8	469 12	579 12	625 –	780 –
823 12	416 8	357 8	769 –	586 12	475 8	268 4	384 12	532 –	473 8
890 2	617 12	491 8	438 –	467 12	437 4	285 –	433 –	428 4	476 8
321 8	242 4	240 4	311 8	249 –	229 –	259 12	246 –	307 12	227 12
429 2	286 –	418 –	2,793 4	3,142 –	3,019 –	2,734 4	3,329 12	2,889 4	2,477 12
347 –	179 8	174 8	168 4	184 –	110 12	210 12	142 12	130 8	123 4
135 10	214 4	64 12	84 4	83 4	63 4	61 8	55 12	46 4	41 4
433 6	224 12	204 12	249 12	304 8	238 4	943 8	1,004 12	566 –	702 12
144 6	36 –	53 4	98 –	48 12	58 –	47 8	47 8	63 12	29 12
28,396 4	22,751 12	17,077 8	16,023 4	19,940 12	21,786 8	16,722 4	18,906 –	19,722 –	17,839 4

SAYER ROWANNAHS.

1237.	1238.	1239.	1240.	1241.	1242.	1243.
Rs. *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*
- -	- -	- -	- -	- -	- -	- -
65 6	73 6	80 10	53 12	77 14	108 3	78 2
617 2	678 10	679 10	595 15	688 10	626 5	492 7
166 9	269 12	238 –	68 2	131 6	193 3	205 7
273 10	681 11	253 1	194 2	247 2	172 10	187 8
237 –	212 5	205 2	186 2	195 2	179 –	204 15
10 2	13 1	11 9	9 13	7 15	9 10	10 6
817 14	1,791 3	1,852 9	1,947 –	1,922 13	1,749 3	1,699 6
833 13	2,929 1	2,721 –	2,958 11	2,661 12	2,249 15	2,230 –
134 7	1,129 1	1,098 15	1,436 1	1,113 6	915 10	862 3
255 15	7,778 2	7,140 8	7,449 10	7,046 –	6,203 11	5,970 6

SEA CUSTOM ROWANNAHS.

1234.	1235.	1236.	1237.	1238.	1239.	1240.	1241.	1242.	1243.
Rs. *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*
1,339 6	1,594 1	1,445 3	632 10	778 1	667 1	669 10	607 8	546 4	610 4
59 1	128 1	83 2	80 8	68 1	64 12	85 8	65 11	58 4	61 3
—	—	—	—	—	—	—	—	—	—
350 1	321 13	364 2	290 13	297 12	194 7	167 15	162 2	120 12	162 13
352 11	272 –	341 5	382 –	420 9	500 –	164 6	69 5	176 4	137 13
1,369 7	1,485 5	1,064 3	770 6	1,391 10	1,384 12	673 5	973 –	1,014 –	1,165 –
118 15	110 5	93 5	101 13	65 14	105 13	140 15	152 10	172 13	170 4
—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—
3,589 9	3,911 9	3,391 4	2,258 2	3,021 15	2,916 13	1,901 11	2,030 4	2,088 5	2,307 6

(signed) *Findlay Anderson,*
Acting Sub-Collector Charge.

STATEMENT showing the Number of PAPERS of the Value above 16 Rupees, and Amount of the Value sold in each Fusly from 1234 to 1243.

	1234.		1235.		1236.		1237.		1238.		1239.		1240.		1241.		1242.		1243.	
	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.	Number of Papers.	Amount.
		Rs.		Rs.		Rs.		Rs.		Rs.		Rs.		Rs.		Rs.		Rs.		Rs.
Hoozoor - -	295	8,236	244	7,960	191	5,106	144	4,036	178	4,950	279	7,278	142	4,068	161	4,324	187	5,684	140	4,230
Honore - -	-	-	-	-	-	-	43	1,250	43	1,334	46	1,138	31	774	40	1,018	38	706	29	760
Sondah - -	-	-	-	-	-	-	-	-	-	-	-	-	9	224	9	176	5	80	7	178

(signed) *Findlay Anderson*,
Acting Sub-Collector in Charge.

Mangalore, 17 June 1835.

From *F. F. Clementson*, Esq. Principal Collector, Malabar, to the Superintendent of Stamps, Fort St. George.

Malabar, Principal Collector's Office, on Circuit
Parrony Botatnaad Talook, 30 March 1835.

Sir,

Para. 1. I HAVE the honour to acknowledge the receipt of your circular letter, dated the 9th instant, calling for a report on the defalcation in the revenue from stamps, and desiring me to offer such suggestions as may occur to me, calculated eventually to raise it to its former standard.

2. It is satisfactory to observe that Malabar bears but a very small share of the large deficiency noticed in your letter, viz. 174,309 rupees per annum; for according to the statement transmitted by you, the falling off in this district averages 1,119 rupees per annum only, or 10*a*. 3*p*. per cent.

3. Were a comparison also to be made between the average annual revenue of the 10 years under review, and that of the 10 fuslies preceding 1834, the result will be found to be much in favour of the period in question, as demonstrated in the margin, so that in spite of there being sufficient causes (which shall be hereafter explained) for the variations observable in the annual revenue from 1234 to 1243, producing the average decrease above noticed, the sale of stamps may be said to have improved rather than fallen off in this district, particularly when it is considered that section 4, Regulation II. of 1835, exempted instruments for sums not exceeding 64 rupees from being written on stamped paper; whereas, by section 11*, Regulation XIII. of 1816, this indulgence was confined to instruments for sums not exceeding 16 rupees: moreover, sections 5 and 6 of Regulation first quoted did away with sundry sources which contributed to the stamp revenue comprised in the amount realized between 1224 and 1233.

Fusly 1224 - -	19,686	1	4
1225 - -	22,642	11	7
1226 - -	20,317	14	1
1227 - -	29,558	4	7
1228 - -	31,010	12	11
1229 - -	39,553	11	1
1230 - -	41,921	8	–
1231 - -	42,692	13	2
1232 - -	44,274	10	–
1233 - -	56,838	1	–
	348,496	7	9
Average - - -	34,849	10	3
Average of the Fuslies from 1234 to 1243	52,566	10	10
Difference in favour of the last 10 Years -	17,717	–	7

4. I shall now proceed to explain the causes which have affected in some degree the revenue from this source. The material most used in this district for bonds, deeds of sale, &c., is stamped cadjans, the sale of which, from 1234 to 1237, varied from 11,805 to 8,487 rupees, but from 1238 it has continued below 8,000 rupees, the highest amount being 7,911 rupees. The more the provision of clause 1, section 3, Regulation II. of 1825 becomes known, the more will the people evade the stamp tax, for they are aware that the utmost risk they run is the eventual payment of the penalty denounced in that clause, in case the instrument should ever be produced before a public tribunal, the chance of which is considered improbable in all fair transactions; whereas section 10, Regulation XIII. of 1816, rescinded by the clause just adverted to, declared that instruments not written upon stamped paper would not be received in any court of judicature, which was too much for any one to

* Rescinded.

No. 7.
On Stamps.

to hazard by an infraction of the Regulation. It may be inferred that the law as it now stands, is inadequate to insure a general due adherence thereto.

5. Another cause of the deficit which the stamp revenue exhibits is to be traced to the extension of the jurisdictions in civil matters granted to the registrar of the zillah court and the native judicatories, by sections 3, 4, and 5, Regulation III. 1833. For suits before the officers described in the two first sections, the costs of stamps prescribed in sections 19 and 22, Regulation XIII. 1816, are respectively one step lower, whilst no stamp at all is required for suits before the district moonsiffs, as far as the enhanced sum of 1,000 rupees. This assumption is borne out by the reduced sale of decree and other stamped paper, used for judicial purposes in fuslies 1242 and 1243, compared with the sales of the previous years; much also depends upon the activity with which business is carried on in the civil courts.

6. The deficiency in the amount derived by the sale of rowannahs during the last three years, is solely attributable to the depressed state of the trade, the cause of which has been fully stated in my annual reports to the Board of Revenue.

7. The foregoing explanations will, I trust, fully account for the small deficiency which occurred in the stamp revenue of this district; and with advertence to the third paragraph of the letter now under reply, I beg to state that I have no reason to believe that any part of it is attributable to fraud and illicit sales. I have, however, sent instructions to the sub-collector at Tellicherry, and the assistant at the huzzoor station, to compare the stock of stamps on hand with the darogahs' accounts; should any difference be found I shall do myself the honour of reporting the same to you. It may be as well to observe, that all the darogahs and venders have given ample security; they are aware that they are accountable for every roll of paper under their respective charge.

8. The accompanying copy of letter to the address of the Board of Revenue, will give you the information called for in the fourth paragraph, regarding the manner in which the five per cent. commission has hitherto been disposed of; the arrangement therein described appears to me to be sufficiently well calculated to excite zeal and attention on the part of those entrusted with the custody and sale of stamps.

9. I am not aware that, under existing circumstances, there is reason to expect any great improvement in the stamp revenue beyond the present standard, nor does any plan occur to me which would yield so large a sum as *Rs.* 17,510. 6*a.* 4*p.*, to cover the loss which Government would sustain if the rowannahs were done away with. If anything can bear a stamp too, I think the trade of the country can do so better than private transactions between individuals, particularly when such transactions arise from causes of necessity, for then the stamp tax tends to add to the distress which compels borrowing of money, or the sale of mortgage of property, the expense being generally incurred by the necessitous borrower or seller, not by the lender or purchaser.

Average amount, per annum, from 1234 to 1243.

(signed) *F. F. Clementson,*
Principal Collector.

From *F. F. Clementson*, Esq. Principal Collector, Malabar, to the President and Members of the Board of Revenue, Fort St. George.

Malabar, Principal Collector's Office, Calicut,
18 October 1834.

Gentlemen,

1. I HAVE the honour to acknowledge the receipt of your circular order, dated the 15th ultimo, desiring me to report in what proportions the commission allowed on the gross produce derived from the sale of stamps is distributed in this district, and in what manner the stamp venders appointed under clauses 4 and 6, section 10, Regulation XIII. of 1816 are remunerated.

2. I beg, in reply, to state, that of the 10 per cent. commission on the gross sale of stamps (except stamps used on account of Government), five per cent. is paid to the collector, as allowed by clause first, section 10, of the Regulation above quoted; the other five per cent. is distributed as follows, according to an arrangement which has obtained in this district for many years past.

3. Of the five per cent. on all stamps sold at Calicut, a fixed pay of 35 rupees per month is allowed to the darogah at the huzzoor station, in charge of the stamp

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paper and cadjans (who has given ample security), the remainder is distributed in equal proportions to the vender under him, and to the accountant in the huzzoor office, who prepares the English statements, &c. of this department.

4. At Tellicherry, the seat of the provincial and military courts, there is another darogah who is allowed five per cent. on all stamps sold by him, provided it does not exceed 40 rupees per mensem, in which case the excess is added to the sum distributed amongst the establishment at Calicut, alluded to in the preceding paragraph. The average amount received by each individual during the late fusly, was 21 rupees, and in the antecedent year 17 rupees per month. In the like manner the venders at the several talooks and principal towns, who are all well supplied with stamps, are remunerated at the rate of five per cent. on their respective sales.

(signed) *F. Clementson,*
Principal Collector.

From *John Orr,* Esq. Principal Collector, Oossoor, to the Superintendent of Stamps, Madras.

Salem Zillah, Oossoor, Principal Collector's Cutcherry,
Sir, 7 April 1835.

I HAVE the honour to acknowledge the receipt of your letter of the 19th ultimo, and to acquaint you that I lost no time in directing Mr. Moore, the assistant-collector, to make the necessary examination of the stamps on hand at the Salem cutcherry. From a memorandum furnished by that officer, I find that the stamps had been examined on the 23d ultimo, and were found to correspond with the balance exhibited in the accounts of the day, but with the following exceptions; viz.—

Excess of a two rupees Europe decree paper.
Deficiency of 100 one anna rowannahs.
Paper excess of 100 one rupee rowannahs.

As the difference of these errors is in favour of Government, I have no reason to believe that any fraud has been practised, but rather that the errors are merely clerical; I have, in consequence, directed the darogah to trace them in his accounts, and report how they have occurred: when this is done, the same will be communicated to you.

2. In reply to para. 3, of the communication under acknowledgment, I beg to refer you to the accompanying copy of a letter to the Board of Revenue, dated 24th September last, which will afford the information you require relative to the distribution of the 5 per cent. authorised to be granted to venders; and from which you will observe that no change is at present required. I am not aware that the zeal of the stamp venders required to be stimulated, that their zeal has anything to do with the extent of the sales. I doubt much, then, if going about to solicit people to purchase stamps would augment the sales: they are like money changers, who must wait till applied to for their commodity. While collectors receive the handsome remuneration which they now do, of 5 per cent. on the sales of stamps, there is no fear of any falling off in this branch of revenue from inattention on their part. The fact is, it is a revenue of that nature which does not depend for its increase or diminution on the zeal or remissness of the venders or the revenue officers. The large falling off which appears to have taken place of late years may, I think, be fairly referred to the circumstances of the people, their deteriorated condition generally, and the consequent diminished litigation; and so far from ever expecting to see the stamp revenue restored to its former amount, I think a continued annual diminution may be looked for.

3. I quite concur with you, that it would be highly desirable to exempt custom rowannahs from stamp tax; but as the trade of the country, in its present depressed state, can ill afford to pay the transit duties, it could not be expected that from this source the loss of the rowannah tax can in any other way be made up. As it is in the contemplation of Government, however, to modify and reduce the transit duties, the expediency of exempting customs rowannahs from the stamp tax will probably come under their consideration.

4. Did the law permit Hindoos to bequeath their property by will as they pleased, it would be desirable that wills should be required to be written on stamp paper,

as

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as this would in part guard against fraud, by fixing the date of the execution of the deed; but the law as it now stands on this point is, as regards the Hindoos, a mere nullity. The validity of wills of Hindoos is declared to be "dependent on their conformity to the Hindoo law." If they die intestate, their property goes according to the Hindoo law of succession; and as they cannot bequeath it otherwise, I do not think wills at present likely to come into vogue with Hindoos, or to yield much stamp revenue.

(signed) *John Orr*,
Principal Collector.

From *John Orr*, Esq. Principal Collector, Oossoor, to the President and Members of the Board of Revenue, Fort St. George.

Salem Zillah, Oossoor, Principal Collector's Cutcherry,
Gentlemen, 24 September 1844.

I HAVE the honour to acknowledge the receipt of your secretary's letter of the 15th instant, and to acquaint you, in reply, that the following distribution of the 10 per cent. allowed on the sale of stamp paper obtains in this district:

On Huzzoor Sales:

To the collector	5 per cent.
Huzzoor stamp darogah	5 —
	10 per cent.

On District Sales:

To the collector	5 per cent.
Huzzoor stamp, darogah	2 ½ —
District venders	1 ½ —
Huzzoor stamp, saderwared	1 —
	10 per cent.

The stamp vender formerly received 1 per cent. on the district sales; but from the recent great decrease in the sale of stamps, it was lately found necessary to raise his share of the commission to 2 ½ to afford him a fair remuneration. *Vide* my letter to your Board, 19th January 1830.

(signed) *John Orr*,
Principal Collector.

From *R. Eden*, Esq. Collector, Tinnevelly, to the Superintendent of Stamps, Fort St. George.

Tinnevelly, Trichendoor, Collector's Offices,
Sir, 13 April 1838.

Para. 1. I HAVE the honour to acknowledge the receipt of your letter of the 9th ultimo, giving cover to a statement of revenue derived from stamps in this district for the last 10 fusly years.

2. The actual decrease of the stamps revenue in Tinnevelly during the last 10 years is *Rs.* 4,623. 1 *a.*, which would appear from the foregoing statement to have arisen chiefly in the land customs rowannahs; since the system of renting the sayer has been introduced, the receipts under this head (excepting for one year) have diminished more or less, which is attributable to a decrease of trade, and in some degree to the renters not issuing rowannahs strictly to all individuals as they ought and are enjoined to do. When they clear goods intended for consumption within the limits of their respective chowkies, they not unfrequently omit giving a rowannah for the same, but grant a cadjan chet only, on the production of which the servants of the chowkey at the different mettoos create no difficulty about passing the goods. I have taken all possible measures to check this practice.

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3. I am not aware any impediments have been experienced by the trading community in this district from the operation of the stamp rowannah tax, nor am I able to suggest any substitute from which an equivalent revenue could be derived.

4. With respect to the proposition that all natives might be required to dispose of their property by will, subjecting such bequests to a stamp duty, I would observe that every Hindoo heir is by the Hindoo law entitled to his parent's estate, with or without a will.

5. Only a part of the five per cent. commission authorized to be granted to the stamp darogahs, &c. has been disbursed. The venders in this district are employed on monthly pay, which amounts to *Rs.* 4,353. 7 *a.* 5 *p.* for the period of 10 years, noticed in your statement now under acknowledgment; whilst the authorized commission of five per cent. on their account amounts to *Rs.* 11,271. 11 *a.* 5 *p.* for the same period, leaving a balance of *Rs.* 6,918. 4 *a.* in favour of Government. Although they are paid moderately, I do not conceive that any vigilance has been wanting on their part to which the trifling decrease now under notice can justly be said to be attributable.

6. Orders have been despatched to the talooks to examine the stock of stamps on hand with the accounts of the venders, and should there be any difference therein, it shall be reported for your information.

(signed) *R. Eden*, Collector.

From *H. M. Blair*, Esq. Collector, Samiaveram, to the Superintendent of Stamps, Fort St. George.

Trichinopoly, District Samiaveram,
Collector's Court Cutcherry, 22 April 1835.

Sir,

Para. 1. I HAVE the honour to acknowledge the receipt of your letter of the 9th ultimo, communicating for my inquiry and report the great falling off that has taken place within the last 10 years in the revenue derived from stamps, and calling for my opinion as to the steps to be taken to check any abuses that may have arisen, to remedy any evils complained of, and eventually to raise the revenue from this source to its former state.

2. The increase of the stamp revenue in this district within the last 10 years is to be attributed to the following causes: the abolition of the zillah court at Trichinopoly, in the year 1822, whereby the sale of the greater part of the stamped paper required in the civil suits originating in this district was transferred to Combaconum, and to the discontinuance of the practice of requiring petitions addressed to the Board of Revenue and the several courts of law, and puttahs and moochilkas executed by the sayer renters, to be on stamped paper. To this may be added the depression of trade within the last two years, owing to the scarcity and general distress prevailing, which has proportionably affected the sale of rowannahs.

3. The only abuse in the system which I am aware of, is the practice adopted by the sayer renters of granting chets of their own instead of rowannahs for the transit of goods, for which they demand but half the price of the rowannahs. It is seldom that these frauds on the sayer revenue are brought to notice, as it is not of course to the interest of the trader to complain of the practice. I have no doubt, however, that a very considerable diminution of the sale of rowannahs in the talooks is occasioned by it, as it appears to be in contemplation to exempt custom rowannahs from the stamp duty, a measure which I conceive would be most beneficial to the trade of the country, it seems unnecessary to suggest any measures for checking the abuse above alluded to. From the foregoing statement of the causes that have led to the falling off in the sale of stamps in this district, it will be evident that no great improvement in this branch of revenue can be expected under present circumstances.

4. With regard to the third paragraph of your letter, the stock of stamps on hand has been examined, and on comparing them with the sale accounts of the stamp darogahs, they were found to correspond correctly.

5. With reference to the fourth paragraph of the letter under reply, the stamp darogah, since the receipt of your predecessor's letter of the 20th September 1817, has been allowed a commission of five per cent. on the gross sales. The thasildars

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in the several talooks are supplied by the darogah with the quantity of stamped paper and cadjans they require monthly, their applications being made through the collector, and they receive five per cent. on the sales made by them. The sale of stamped paper and cadjans in the talook is, however, very inconsiderable, and the commission drawn by any one thasildar never amounts to half a rupee a month.

6. I am not aware whether it is your desire that the rule of commission authorized to be paid to the darogah should be decreased. It is not likely, I conceive, that his zeal would thereby be excited, nor indeed does it appear how any exertion on his part could increase the sale of stamps, the demand for which depends on causes over which he cannot possibly have any control. The average commission of the stamp darogah in this district does not exceed 30 rupees per mensem. The reasons assigned by the stamp darogah for the decrease in the sales of stamped paper are the same which are stated in the former part of this letter.

7. In the event of customs rowannahs being exempted from the stamp duty, and it being considered necessary to make good the revenue that would be lost by repealing this tax, I cannot conceive any more legitimate tax to substitute for it than the one alluded to in the 5th paragraph of your letter, viz., the subjecting bequests by will to a stamp duty. It is to be doubted, however, whether as much revenue as would be required to make good the deficiency could be realized from such a source, as the practice of bequeathing either real or personal property by will is very rare among the natives (in the southern provinces at least), it being indeed inconsistent with Hindoo law, though I believe the custom is gaining ground at the presidency.

8. It has occurred to me that another means of raising the necessary revenue, and in my opinion not an unfair one, might be found in requiring all enamdars, shotriumdars, and zemindars, whose lands have formerly been exempted from the Government tax, to pay a fine, according to a fixed scale, on first succeeding to their estates. This tax could not be considered an oppressive one, for as there are no assessed taxes in this country which reach the higher classes, the parties by whom it would be paid may be said to bear no part of the public burden, the quantity of taxable commodities consumed even by the wealthiest natives being so small as to yield but the merest fraction of revenue to the state.

9. With regard to the last paragraph of your letter, it is not easy to frame rules which may oblige persons to take receipts on stamped paper who voluntarily take upon themselves the risk they now incur by accepting such deeds on unstamped paper. It is certain that the greater number of promissory notes, receipts, acquittances, and other instruments used in the course of trade and in various private transactions, are executed on unstamped paper and cadjans. It is seldom that a receipt is given on separate paper. The most usual plan is to endorse on the back of a bill, bond, or other deed, the receipt of the money or goods, which is most generally paid by instalments.

10. It would be advisable, I think, to give the most complete promulgation to the stamp Regulation, which, I apprehend, is least imperfectly known in many parts of the provinces; and it is worthy of consideration whether it would not be desirable to make it illegal for any person to execute a receipt on unstamped paper. In the event of such a law being enacted, I think it should embrace all classes in the country, for it would be a most invidious distinction to restrict it to transactions among natives. If the stamp duty were moderate, the tax could not press heavily on the mercantile community; and it would have one great advantage of rendering it more difficult to forge instruments of any standing, as the date of the paper would be a check, and the stamp might be varied from time to time by marks known only to the officers of Government, which would make the counterfeit of the die easy of detection.

11. This report should have been earlier submitted, but I was engaged in the jummabundy when your letter was received, which prevented me immediately giving the subject the attention it required.

(signed) *H. M. Blair*, Collector.

No. 7.
On Stamps.

From *J. Dent*, Esq. Principal Collector, Cuddalore, to the Superintendent of Stamps, Fort St. George.

Cuddalore, Principal Collector's Cutcherry,
Sir, 27 June 1835.

Para. 1. I HAVE the honour to acknowledge the receipt of your letter of the 9th March last, transmitting a statement for my inquiry, and report showing the falling off in the revenue from stamps in this district in the last ten years, soliciting my aid in preventing its further diminution, and my opinion as to the steps to be taken to check any abuses that may have arisen, to remedy any evils complained of, and eventually to raise the revenue from this source to its former state.

2. In the statement received from you the actual decrease in the gross revenue, in the last ten years, is shown to be *Rs.* 2,177. 11 *a.* 8*p.*, or on average, *Rs.* 217. 12 *a.* 4 $\frac{4}{12}$ *p.* per annum. Considering the various cases that have operated to diminish the sales of stamps, the amount of decrease here shown may, I think, be looked upon as very small indeed. In the first year, 1234, of your statement, you will observe a collection of 1,590 rupees on account of abkarry licences; in the following year a regulation came out, directing that abkarry licences should no longer be executed upon stamp paper; and from that day you will perceive that no collections whatever have been made on that account. In the remaining nine years, therefore, embraced by your statement, the decrease from this cause alone may be estimated at 14,310 rupees.

3. In fusly 1234 the receipts from the sale of 2 anna stamped cadjans and 2 anna paper was 1,199. In 1835 the sale of this description of stamp paper was entirely put a stop to by the discontinuance of stamps for bonds and other documents, for sums under 64 rupees. Assuming the collection of 1234 from 2 anna paper to be a fair average, the loss in the other nine years of your statement, from the sale of this description of paper being discontinued, amounts to 10,791 rupees. The collection from the two foregoing sources alone being stopped has been the occasion of a direct loss of 25,101 rupees. To these causes of loss I may add the order of the Board of Revenue, under date 19th February 1827, declaring it optional for all parties to take out rowannahs upon the exportation of goods by sea. It having been the practice up to that time to require all parties exporting goods to take out rowannahs, a very considerable diminution in the sale of stamps in the same custom department is to be ascribed to this. I may next add the general falling off in the commerce of the district, both by sea and land, and the consequent diminution of the sale of sayer rowanahs; and lastly, I may adduce as a very material cause for the falling off in the stamp revenue, the extension of the jurisdiction of district moonsiffs, in whose courts no stamps are used, and the consequent withdrawal from the zillah courts, where stamped papers are used in all the proceedings of suits, from 500 to 1,000 rupees. The foregoing are the main causes which have contributed to the falling off in the stamp revenue.

4. The stamps in possession of the venders in the talooks have, at different periods, been examined, and I have never found any inaccuracies in their accounts, nor have I any reason to suspect fraud from illicit sales. Regarding the distribution of the five per cent. commission, I had the honour to address the Board of Revenue, under date 24th September last; copy of my communication I do myself the honour to forward. I find the stamp venders all very attentive and correct in their accounts, and see no reason for recommending any alteration in the distribution of the commission.

5. From the depressed state of commerce the sale of stamps has already very much decreased, and I certainly am not prepared to recommend the exemption of custom rowannahs from this tax. The tax, though in the first instance paid by the merchant, ultimately falls upon the consumer, and I consider that there is not a more legitimate source of taxation.

6. It will afford me great pleasure to have an opportunity of co-operating with you in any approved measure which may tend to the increase of the stamp revenue, but I fear that little can be expected from the imposition of a stamp duty on bequests of natives. Section 4, Regulation II. of 1825, in the first place, exempts wills from being executed on stamped paper; and I think that any interference, such

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such as the imposition of a stamp duty on bequests, would be a most improper measure, and by no means advisable.

7. In like manner, section 3, Regulation II. of 1825, leaves it optional with parties to take receipts in stamp paper, and I have reason to believe that it is not the practice generally to do so; indeed, in the case of the discharge of bonds, or other written instruments, the acquittance is most commonly written on the back, which is certainly the most satisfactory mode of giving an acquittance.

8. I should have had the honour of submitting this reply to your letter under acknowledgment at an earlier period, but I have been engaged in the district, with the jummabundy, and had not the accounts with me which were necessary to enable me to reply.

(signed) *J. Dent*, Principal Collector.

From *J. Dent*, Esq. Principal Collector, to the President and Members of the Board of Revenue, Fort St. George.

Cuddalore, Principal Collector's Cutcherry,
24 September 1834.

Gentlemen,

Referring to your deputy secretary's letter of the 15th instant, I have the honour to report, that the 10 per cent. commission allowed on the gross produce derived from the sale of stamps in this district, is distributed in the portions undermentioned:

1st. Five per cent. to the principal collector on the sale of all descriptions of stamps; the remaining five per cent. is distributed as follows:

2d. Five per cent. to the superintendent of sea customs at Cuddalore and Porto Novo, on all sea rowannahs sold by him.

3d. Five per cent. to the hoozoor stamp darogah on all stamps sold by him at the hoozoor, and on all land customs stamped rowannahs issued at the different sayer chowkies, with the exception of sayer rowannahs sold by the venders at Cuddalore and Porto Novo, who receive a commission of three per cent. on their sales, in common with the venders in the talooks.

4th. Three per cent. to the stamp venders in the talooks, on their amount sales; and

5th. Two per cent. to the hoozoor stamp darogah, on the amount of all stamps sold in the talook.

(signed) *J. Dent*, Principal Collector.

(No. 10.)

From *A. Freese*, Esq. Collector, Vizagapatam, to the Superintendent of Stamps, Fort St. George.

Vizagapatam, Collector's Cutcherry,
7 April 1835.

Sir,

Para. 1. I have the honour to acknowledge the receipt of your circular letter, under date the 9th March, relative to the decrease in the revenue derived from stamps, and to inform you, that upon my arrival in this zillah, about one month since, I considered it necessary to compare the stock of stamps on hand with the accounts.

2. The stock of stamps with the darogah at the hoozoor station, and at some of the stations in the neighbourhood, have been found, with one exception, correct, and to correspond with the accounts of the quantity delivered to and sold by them; and, in the instance where there was a deficiency of stamps to the value of 67 rupees, the vender was under suspension, and an inquiry being made into the circumstances from the other stations. Answers have not yet been received, but I feel certain that no great difference, if any, will be found. I shall also make a practice of having the stocks examined by my cutcherry servants during the annual tour of settlement.

3. The distribution of the five per cent. commission granted to the darogah and venders is arranged as follows: the darogah receives two per cent. upon all sales, and an additional three per cent. upon all sales effected through himself;

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all heads of police and thanardars are also appointed venders, and receive three per cent. upon sales effected by them respectively; this per-centage is considered sufficient to remunerate the darogah and venders for their labours; nor do I think any better distribution of it could be suggested.

4. On an examination of the accounts which accompanied your letter, I see the great decrease is in land custom rowanahs; to account for which, I must refer you to the following extract from my Report to the Board of Revenue upon the extra sources for the past fusly. "One subject, however, connected with this branch of revenue demands attention; it is the gradual decrease in the quantity of land rowannahs expended, which I cannot attribute to any decrease in the inland trade, or capital of the province, but to the renters and merchants combining to defraud the Government by taking rowannahs upon blank paper instead of upon stamps; this, as long as the whole district is farmed to one person, and the merchant does not require to export his goods to another district, is most difficult to check; because the renter can make his own notes pass current at any of his own chowkies, and as no one but the Government is injured, there is no one to come forward and complain. The best check that I can at present suggest for this is, at the time of renting the sayer to divide the province into four or six districts, putting each up to public competition, instead of renting the whole district in one lot." I am not prepared at present to offer any other suggestion to counteract this evil, and to raise the revenue derived from that source to its former state.

Dated 3 April 1835. Para. 7.

5. With regard to the suggestion of enabling all natives to dispose of their property by will, subjecting such bequests to a stamp duty, I must state, with due deference, my opinion that the measure would fail, and that it would be extremely unpopular with the native population, as it would lead to a degree of inquiry into their property, to which no nation is more averse. By the present interpretation of the law, as laid down in the higher courts, Hindoos are, I believe, permitted to will away any property they may have acquired themselves, whilst property inherited must be divided according to the scale laid down in the Hindoo law, with which, excepting under very urgent circumstances, the Government would, I imagine, be unwilling to interfere; any interference of Government, therefore, would only be to declare that legal which has been decided in the court to be so.

(signed) *A. Freese*, Collector.

From *J. D. Gleig*, Esq. Principal Collector, Midnapeley, to the Superintendent of Stamps, Fort St. George.

Sir, Midnapeley, 8 June 1835.

I HAVE the honour to acknowledge the receipt of your letter of the 4th instant. Having been employed in the districts on jummabundy since my arrival, I delayed replying to your circular of March last, until my return to Cuddapah should enable me with more facility to investigate the nature of the deficiency found in the stamp papers in this zillah, amounting to 4,600 rupees. I set out for Cuddapah this evening, and shall lose no time after my arrival in sending you my report.

(signed) *J. D. Gleig*,
Principal Collector.

From *J. D. Gleig*, Esq. Principal Collector, to the Superintendent of Stamps, Fort St. George.

Cuddapah, Principal Collector's Office,
Sir, 27 June 1835.

IN acknowledging the receipt of your letter of the 9th March last, which I have been prevented replying to until I was able to give an opinion on the deficiency found

found to exist on examination of the stamp accounts, amounting to *Rs.* 4,600. 8 *a.* I have now the honour to state that the whole of this deficiency has taken place in the sales by the stamp vender in Cuddapah, who, shortly after the receipt of your order, complained of a theft having taken place in his house, by which the loss of stamp paper to the amount above stated had been sustained, he having, on account of sickness which prevented him from leaving home, removed his stamps from the talook cutcherry to his house, to enable him to continue his sales. As it is seldom that thieves are content to carry away papers; as the plunder had to be carried through a number of persons asleep at the door of the chamber in which the stamps were placed; as I observed, that at the commencement of the year 1834 he had a balance of paper on hand, value *Rs.* 5,973. 8 *a.*, while he was receiving fresh monthly supplies to his sales; as there was no need to remove 4,600 rupees' value of paper, he having stated his illness to have lasted for 25 days only, and his average monthly expenditure being about 800 rupees,—I could not give credit to the assertion that a robbery had caused the loss of paper in question. I have now had his account of sales examined from the beginning of 1834, and find that during that period the amount of sale brought to Government account is less than the actual amount by about 700 rupees. As it is now necessary to examine into accounts of several years, before coming at the true state of this matter, I cannot further delay my report on the circumstances required.

With reference to the case I have now referred to, I think that facilities have been given by allowing the hoozoor stamp darogah to have the complete control and management of his accounts, without being brought to check in the sheristadar's cutcherry, the darogah being married to a daughter of the vender's brother, who is a writer in the English account department in this cutcherry. Facilities have also been afforded by the collectors putting their signatures to quantities of paper far exceeding the current demand, there being at present in the darogah's possession 9,051 signed papers, value 13,150 rupees, bearing the signatures of various collectors, from Mr. Hanbury downwards. This also affords the means of framing false documents, which the signature of the collector, if regularly attached, is often, I believe, the means of preventing. As the stamp papers are of no value unless the collector's signature be affixed, yet at the time of signature if a book be presented to him in the form which accompanies, I do not think it possible that any great fraud could occur. I think, however, that the stamp accounts, as well as every other, should be checked by the sheristah department before being passed. The commission in this district has been divided between the darogah and venders, in the proportion of two parts to the former and three to the latter. I do not think that any change relative to this could increase the demand.

In the statement forwarded by you, the amount of decrease on the gross revenue only amounts to *Rs.* 417. 5 *a.* 3 *p.* on an average, including *Rs.* 1,300. on abkarry licences, now abolished; there is, however, a comparative large decrease in the items of Europe decree paper and in custom rowannahs, in fuslies 1242 and 1243. The increased jurisdiction granted to moonsiffs, whose decrees do not require a stamp, may partly account for the former; and for the latter, the late year of scarcity, and more particularly the plan now adopted by the merchants of dividing their goods when of large amount into sundry parcels, taking for each parcel a rowannah of smaller amount, is a cause of considerable loss in the sayer stamps.

It appears to me that the only mode of giving effectual operation to the law requiring receipts to be on stamps, is by the declaration that they are invalid unless so written, and preventing stamps being given to writings originally executed on common paper.

I do not coincide in opinion that it would be advisable to enable all natives to dispose of their property by will; I do not think the object to be obtained is of sufficient value to authorize so great a change in so important a point of the Hindoo law. The danger of forgery, and the difficulty of prevention, is much to be feared, and is, I think, sufficiently apparent from the facility with which false deeds of sale and mortgage are got up when property is in danger of attachment, either under a decree of court or by the revenue authorities. If the Government are inclined to give up the sayer stamp revenue, I am of opinion that a general registry of all transfers of real property would be a better mode of raising the revenue than by introducing a legacy duty, and breaking down the law which at present regulates the division

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of property. The latter measure would not only be made a profitable source of revenue, but what I think is of more importance, it would effectually secure the creditor from fraud, provided no transfer was made legal unless registry had taken place, and that the transfer books should be available either for inspection or extract to whoever might require.

(signed) *J. D. Gleig,*
Principal Collector.

FORM.

Month and Date.	Number of Papers Signed.	Value.	Collector's Signature.	Month and Date.	Collection.	Signature of the Treasurer.
		£. s. d.				

(signed) *J. D. Gleig*, Principal Collector.

(True copies.)

(signed) *H. Chamier*, Chief Secretary.

(No. 73.)

Legis. Cons. 6 March 1836–37. No. 17.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, Legislative Department, to *W. H. Wathew*, Esq. Chief Secretary to the Government of Bombay.

Sir, Fort William, 2 May 1836.

I AM directed to call your attention to my letter, No. 31, dated the 26th October last, to the address of Mr. Chief Secretary Norris, and to request that the Right honourable the Governor in Council will be pleased to favour the Supreme Government with his opinion on the subject of stamps required by that communication.

I have, &c.
(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

JUDICIAL DEPARTMENT.

(No. 1200 of 1836.)

Legis. Cons., 6 March 1836–37. No. 18.

From *J. P. Willoughby*, Esq. Secretary to Government, to the Secretary to the Government of India, Fort William.

Sir, Bombay Castle, 12 July 1836.

I AM directed to acknowledge the receipt of your letter of the 26th October last, transmitting for the consideration of this Government copies of a letter and correspondence on the subject of stamp duties, and requesting to be informed whether the Right honourable the Governor is aware of any objection to the schedule of stamp duties already existing under the Bengal Presidency being made applicable to the Bombay Presidency, and whether the rules which are in force for the collection of stamp duties in the interior should not be made equally operative within the jurisdiction of the Supreme Court.

2. In reply the Right honourable the Governor in Council has instructed me to request you will submit to the Right honourable the Governor-general of India in Council extract from the proceedings of this Government on the above subject, together with copies of the minutes recorded by the members of Government on the occasion.

I have, &c.
(signed) *J. P. Willoughby,*
Secretary to Government.

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Legis. Cons.
6 March 1836–37.
No. 19.

EXTRACT from the Proceedings of Government in the Judicial Department.

Minute by the Right honourable the Governor, subscribed to by the Board; dated 28th January 1836.

BEFORE we can reply to this reference it is, I think, necessary that we should refer it to the Sudder Adawlut magistrates, and to the superintendent of stamps, for any observations they may have to offer, and I should also wish to have the benefit of the revenue commissioners' sentiments on the measures contemplated by the Supreme Government.

(signed) *R. Grant.*

Judges of zillah courts instead of magistrates.

(signed) *J. Sutherland.*

From *J. P. Willoughby*, Esq. Secretary to Government, to the Judges of the Suddur Adawlut,

Gentlemen, Bombay Castle, 16 February 1836.

I AM directed by the Right honourable the Governor in Council to refer to you copy of a letter and correspondence from the Supreme Government regarding the amendment of existing rules relative to the stamp revenue, and to request that you will submit to Government, with as little delay as possible, any observations you have to offer thereon.

I have, &c.
(signed) *J. P. Willoughby,*
Secretary to Government.

The same to all the judges, collectors, superintendents of stamps, and the revenue commissioners.

From the Judge and Session Judge of Konkun.

Sir, Conkun Court of Adawlut, 19 February 1836.

I HAVE perused the regulation regarding stamps accompanying your letter of the 16th instant, and have the honour to report to you, for the information of the Right honourable the Governor in Council, that I have no observations to make thereon.

I have, &c.
(signed) *J. A. Shaw*, Judge.

From the Acting Judge and Session Judge of Ahmedabad.

Sir, Ahmedabad, Court of Adawlut, 23 February 1836.

I HAVE the honour to acknowledge your letter, No. 229, of the 16th instant, referring to me copy of a letter and correspondence from the Supreme Government, regarding the amendment of existing rules relative to the stamp revenue, and calling for any observations I may have to offer thereon.

In reference thereto I have only to state, as a part of the subject coming more particularly within the sphere of my observation, that I am of opinion the application of the provisions of section 2 of the proposed enactment in supercession of clauses 1 and 3, of section 13, of Regulation XVIII. of 1827, will be a decided improvement. But I think the exceptions contained in clause 2 of the same section should be retained, as in territories so intermixed as those of this presidency are with foreign jurisdiction, such exception appears to be perfectly equitable.

I have, &c.
(signed) *P. W. Le Geyt*, Acting Judge.

From the Revenue Commissioner.

Revenue Commissioner's Camp,
Sir, Ahmednuggur, &c. Chenehoondee, 26 February.

I HAVE the honour to acknowledge the receipt of your letter of the 16th instant, referring to me for any observations I might have to make, a correspondence from the Supreme Government, regarding the amendment of existing rules relative to the stamp revenue.

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2. In this department questions respecting the system of stamps as a branch of the revenue are of such very rare occurrence, and when they do arise affect so little the general principle of the tax, that I confess I do not feel competent to give a decided opinion on the subject, viewed as a part of our judicial system; my experience of their operation must necessarily be very limited. My impression, however, has always been that in both points of view the system worked very well at this presidency.

3. The plan for making the schedule of stamp duties, which is at present in force at Bengal, applicable to this side of India, is, I conceive, a question of merely pecuniary loss and gain, since I am not aware of any local or other peculiarities which could possibly affect it.

4. With respect to the facilities which may at present exist for fraud, and the extent to which they may be increased or diminished by any alteration in the rules which are now in force, I would respectfully submit, that the judicial authorities alone possess the information necessary for forming an opinion, and as regards the financial results of any modification of the existing regulations, the sub-treasurer and superintendent of stamps at the presidency is, I would beg leave to suggest, the best, if not the only competent judge.

I have, &c.

(signed) *S. Williamson*, Revenue Commissioner.

From the Judge and Session Judge of Dharwar, with Enclosure.

Sir, Dharwar Civil Court of Adawlut, 27 February.

I HAVE the honour to acknowledge the receipt of your instructions of the 16th of this month, requiring any observations I might have to offer on its accompanying paper regarding stamp revenues, &c.

2. No schedule of stamps under Bengal having been transmitted, I have not the means of forming an opinion how far it is preferable to our own. The costs of prosecuting a suit in a Bombay zillah are estimated at 20 per cent. of its amount, deducting one-fourth as fees to vakeels (which is within the mark, bearing in mind the usual amount of the causes); the remainder, or fifteen per cent., is chiefly for stamps, and appears a heavy charge for justice, more particularly when these costs are doubled by appeal, and trebled if the case is carried to a second court of revision. This estimate, if correct, may aid, in the absence of other data, a comparison of the amount of stamps in judicial proceedings here and at Bengal. The stamps now in force for deeds are certainly not onerous, and I should be disposed to require them on bonds, &c. below 16 rupees. I beg to enclose a copy of a report on this subject to the Suddur Adawlut on the 30th March 1833.

3. It appears to me an omission in our schedule that receipts or acknowledgements are not required to be stamped, and it would be an improvement if the name of the individual to whom the stamp was sold was written by the vender, with the date of sale, on the material, and recorded in his books; it would act as a great preventative against its being used for fraudulent purposes, by affording a clue to and from its original proprietor.

4. If water-marked paper from Europe be required for stamps, considerable inconvenience may be experienced by a deficiency, even under the existing system; where we have only to indent on Bombay it is almost inconceivable how often the demand outruns the supply.

5. Where individuals require their own material to be stamped, an option granted to them, I fancy, at Bengal as well as here, or where bonds, &c., are stamped after being executed, I think the material written upon should itself bear some authentication in addition to the prescribed stamped paper being affixed as proposed in the second clause, section 2, of the draft accompanying the letter of the Board of Customs, &c., of 1st September 1835, to the Government of Bengal, the endorsement on which cannot be too detailed.

6. What I must think a blemish in our Regulation, does not, I believe, exist in Bengal; here any bond or agreement is at once stamped on paying a certain fine, and becomes *quoad hoc* legal, thus acquiring an *ex post facto* validity, which it is palpable may in many instances occasion extreme hardship, or even injustice; the Bengal enactment requires a reason to be assigned for such document not having been originally drawn out on stamped material, and if such reason is not satisfactory, I presume the stamp is refused.

7. The

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7. The counter-stamp being affixed at the Mint, affords an effectual check against fraud in the stamp-office at Bombay, unless the two departments act in collusion: a farther safeguard exists by requiring on each stamp issued the signature of some covenanted servant in the zillah where it is sold. This is a great improvement in the former plan, of such written authentication being made in the superintendent's office.

8. The introduction of the stamp regulation into the local jurisdiction of the Supreme Court of Judicature appears highly expedient, and, if not evaded, must be most productive; the mercantile community of Bombay hardly bear their full share of the expenses of the State. It is true they are taxed for local purposes in common with all other residents, and they enjoy the result in splendid roads and other luxuries. If they lived in the Mofussil, they would be rated to the Mohurturfa at a good round sum, and obtain no such equivalent.

I have, &c.

(signed) *J. B. Simson*, Judge.

(No. 112 of 1833.)

From *J. B. Simson*, Esq. Judge Dharwar, to *P. W. Le Geyt*, Esq. Acting Register to the Court of Suddur Dewanny Adawlut, Bombay.

Sir, Dharwar Court of Adawlut, 30 March 1836.

I HAVE the honour to acknowledge Mr. Young's circular (No. 128), of this year, upon the subject of his being discontinued on suits for property of a less value than 100 rupees.

2. The result of the inquiries which I have instituted, and of my own reflections, has satisfied me that the removal of all fees from small suits would lead to an excessive increase of litigation, and to much vexation towards the poorer classes, and that the benefit would be almost monopolized at their expense by those who certainly thrive more under the British Government of India than their fellow subjects, the sowcars, bangans, and grain dealers.

3. The original grand objection to those suits being untaxed, has been removed by the commissioners receiving fixed salaries instead of being remunerated by fees; for it is quite manifest that under the latter mentioned system there was ample room for collusion in the institution of fictitious suits.

4. The extent to which litigation will be increased is very differently laid down by the different commissioners; one estimates that his file will be increased fourfold, and the lowest calculation makes an increase of from 20 to 22 per cent., while all the others range from 50 to about cent. per cent. I am disposed to think it would be considerable, from having ascertained that upwards of four-fifths of the suits decided in this zillah, since the introduction of the regulations, are for a less amount than 100 rupees.

5. I dread vexation towards the poorer classes, because it is the certain expense attending the prosecution of any claim that alone prevents the creditor from constantly bringing up his poorer debtors. It is now a certain outlay, and a very problematical recovery; under an altered state of things the check would be removed, and I fear we may in vain look for any counteracting moral principle of forbearance.

6. There is another mode in which the debtors will be subjected to trouble. Of course, all debts not greatly exceeding 100 rupees will be very easily brought under the operation of any enactment which may free smaller debts from costs; in the case of bond debts, two acknowledgments will be passed instead of one, and it rests, I presume, with the plaintiff to sue for the whole or a part of his simple contract dues. This is not an imaginary case, for I am assured that the stamp regulation is now evaded by bonds being passed for only 16 rupees or under, the number being enlarged until the whole debt is embraced, by which means no stamp paper is requisite to render them recoverable in the courts; thus two or more bonds will give rise not only to two or more actions, but to actions unattended with expense to the plaintiffs, and hence the distress to the poor debtors will be very considerably enhanced by their constantly dancing attendance at the courts instead of gaining a livelihood by their labour.

7. In support of the third position I have advanced, I find it calculated that three-fourths of the suits are filled by sowcars and shopkeepers against ryots, for supplies, book debts, and advances, when advisable; witness upon witness might be,

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be brought forward without entailing additional expense, from which all the commissioners predict much false evidence.

8. The not requiring stamp paper in all the proceedings, will lead to a most lamentable increase of bulk in all the pleadings and depositions, and carelessness in the general preparation of cases.

9. There can be little doubt that the present costs do prevent poor plaintiffs occasionally from resorting to our courts; but when their necessities are very urgent, this is provided for by the permission to prosecute *in formâ pauperis*, a boon which appears to me to be more than taken advantage of; the only two suits of 10,000 rupees on the file in this zillah have been instituted by pauper plaintiffs, and an appeal against a decree for 1,000 rupees came before me the other day, in which both plaintiff and defendant were paupers. But even if we admit that this permission does not reach the root of the evil, the further difficulty remains, whether, in protecting poor plaintiffs, we do not run into the more distressing extreme, particularly in this country, of overwhelming the poorer debtor, who, for present relief, binds himself by his bond to he hardly knows what amount.

10. I have heard it suggested, that in small suits a certain fixed institution fee would be preferable to requiring stamps and durkhasts, which may run up to a sum quite incompatible with the amount of the action, were it not for the facility by which dues to a larger extent might be brought under the operation of such a clause. I should certainly recommend the alteration proposed, and I am not without hope that this objection might with care be obviated, by declaring such a course penal, or at least making it vitiate the legality of the bonds or claims so brought forward.

11. In regard to the statement which Mr. Young's letter requires, I find it impracticable to say more than I fear the adoption of the measure under contemplation would go far to double the amount of the file, and would certainly increase it 60 or 70 per cent.; but, as I do not think the Commissioners in this zillah have heavy duties generally, so I am of opinion that even the above increase would not render further aid necessary, except Dharwar and Hooghly, at an aggregate expense of about 400 rupees per mensem.

12. The loss likely to accrue to the revenue may be perhaps appreciated by the enclosed statement of costs of suits under 100 rupees instituted since the introduction of the Stamp Regulation; this exhibits an average receipt of 410 rupees monthly, which is within the loss which Government may calculate upon, inasmuch as the number of suits filed is rapidly increasing; perhaps 600 rupees per mensem would be a more correct estimate.

13. In reply to the second paragraph of the circular now acknowledged, I have the honour to report that the Bombay Code of Regulations was not in force in the Southern Mahratta country previous to the passing of Regulation III. A.D. 1828; an enactment sanctioning a fine on litigious suits must almost of necessity, I conceive, be but sparingly brought into execution.

I have, &c.
(signed) *J. B. Simson*, Judge.

From the Acting Superintendent of Stamps, with Enclosure.

Sir, Bombay General Stamp-office, 29 February 1836.

I HAVE the honour to acknowledge the receipt of your letter of the 16th instant, referring to me copies of a letter and correspondence from the Government of India regarding the amendment of existing rules relative to the stamp revenue, and desiring I will submit, with as little delay as possible, any observations I may have to offer thereon.

2. The subject has engaged my earnest attention, and to add some weight to the remarks I have to offer in reply, I beg you to acquaint the Right honourable the Governor in Council that they have the entire approval of the late Superintendent of Stamps, whose opinion on the points in question, from his long experience in the department, I deem it may be satisfactory to the honourable Board to know I have taken pains to ascertain.

3. The subject matter of this reference naturally divides itself into four heads, each of which will require a few observations.

First: The extension of the stamp laws to within the jurisdiction of His Majesty's Supreme Court of Judicature at this presidency.

Second:

Second: The revenue such a measure would be likely to yield.

Third: The adoption of the specific rates of stamp duty laid down in the schedules of the Bengal code.

Fourth: The applicability here of the rules in force for conducting the details of the stamp department in Bengal, including the use of water-marked paper.

4. With respect to the first head, or whether stamped duties should not equally be collected at the presidency as in the interior, it appears to me that every argument which can be urged in favour of these duties in the latter applies with *à fortiori* weight to the former, unless it can be shown that the inhabitants of this island are taxed more heavily in some other form; but this, I should imagine, can scarcely be alleged, since, with the exception of the taxes specified in the margin, which are altogether of a municipal character, being strictly applied to local purposes, that is to say, to the making, repairing, and watering the roads through the island; in promoting the cleanliness of the native town, and otherwise contributing to the comfort and convenience of its numerous population. The aggregate of the other taxes they are subject to, such as customs, town duties, &c., which is all that they contribute to the general government of the country, is, unless I am much mistaken, proportionally not more (if so much) than what is levied under various denominations in other large towns in the interior; and if viewed with reference to the relative means of the parties, is probably much less, and certainly falls far short of what is paid by the agricultural classes, who contribute largely to the stamp revenue notwithstanding.

House assessment within the town limits.
Ditto under Regulation XIX. of 1827, beyond the limits.
Market fees.
Tax on carriages and horses, &c. &c.

5. If, again, it be contended that such a measure would materially enhance the cost of judicial proceedings, already very heavy at the presidency, and that in this respect at least the inhabitants of the provinces have a decided advantage; to this it may be answered, that if, on the one hand, the administration of justice be dearer at the former, on the other hand it is, or is supposed to be, of superior quality to that of the Honourable Company's courts, since it is generally, I believe, held by those at least amenable to its authority, to be an advantage to reside within the jurisdiction of the Supreme Courts.

6. Adverting to the second of the foregoing heads; the amount of revenue which would be derived from the imposition of stamp duties on the island of Bombay was, I believe, roughly estimated at five lacs and a half of rupees, by a committee appointed in the early part of 1827 to inquire into and report upon the subject. *Rs.* 5,50,000.

7. In regard to the next point to be noticed, no objection occurs to me, so far as relates to this island, to the introduction in all its details, of Regulation XII. of 1826 of the Bengal Code, as there would seem to be no such dissimilarity in the circumstances of Calcutta and Bombay as to call for any difference in their stamp laws: but with respect to the interior, as the adoption of the schedules appended to that and other existing regulations in Bengal would cause a complete change in the present system, increasing the tax in many instances, and adding to the number of the deeds and instruments now required to be executed on stamp paper, I do not feel myself competent to offer an opinion; and the local authorities would, I conceive, be best able to judge of its expediency. It is not improbable, however, that the means of forming a correct opinion are already upon record, as the Bombay stamp duties were formerly the same as those now in operation in the Bengal Provinces, and were altered to their present rates by the Regulation Committee which drew up the code of 1827. I shall only observe that there is little doubt that the adoption in question would add from a lac and a half to two lacs of rupees to the stamp revenue in the provinces, or raise its gross amount from rather better than three to five lacs a year.

8. Upon the last head I have to remark, that although not a single instance has come to my knowledge of any forgery or fraudulent imitation of stamped paper in the provinces subject to this presidency, it would doubtless be desirable if stamp duties are to be levied here within the jurisdiction of His Majesty's Supreme Court, that water-marked paper should be available instead of the coarse country material now almost universally in use. Excepting, however, a few Lascars, whose duty it is to work the stamped papers, this change would probably be attended with no saving of establishment, the whole having undergone a complete revision in the year 1831; and as will be seen from the then superintendent's letter on the subject, a copy of which is herewith transmitted, in explanation of the mode of

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Rs. 379.

conducting the details then and now in force, the department is already, perhaps, upon as simple, expeditious, and economical a footing as is consistent with efficiency. The total charge for establishment in the superintendent's office as there shown, is only, it will be observed, 379 rupees per month.

9. In conclusion, although not strictly within the scope of the present reference, it may not be irrelevant in me to observe that the present would seem to be a fit opportunity for reconsidering the propriety of exempting suits of a still higher grade than those which are free from stamp duties under the provisions of Regulation I. of 1814 of the Bengal Code, applicable to the provinces of that Presidency. "I must own" (says Mr. Elphinstone, in one of his minutes when Governor of Bombay,) "that I doubt the accuracy of the calculation that rates the loss by the exemption of suits under rupees 100, at a lac and a half of rupees; but if the amount were 15 lacs, I should not have the least hestitation in supporting the exemption. I have before said that I conceive a tax on complaints from the lowest order of natives, especially ryots, to be the very worst tax that it is possible to lay upon the people. If rupees 1 lac and 50,000, or rupees 15 lacs, are to be raised, I would rather lay it on the trade, on opium, on salt, or salaries, or on anything rather than suits under rupees 100."

10. Two strong arguments in favour of such an exemption occur to me as deserving of attention in addition to the other weighty reasoning by which it has been supported. In the first place the grand argument by which stamps or other duties of a similar nature upon suits of this description was supported at the period of the first institution, namely, that they were absolutely necessary to relieve the European Judges, upon whom the judicial administration of the country then chiefly devolved, from some part of that enormous pressure of business by which they were at one time nearly overwhelmed, no longer holds good, that object having since been attained by the introduction of various changes which have at last gone the length (I speak of this presidency) of vesting the cognizance of all original suits in native Judges stationed at short distances in every zillah, and whose numbers can be increased if necessary at a comparatively trifling expense to the state; and in the second place it may reasonably, I think, be questioned whether the mass of litigation would be so much augmented by such a partial exemption as is generally apprehended, seeing that a very large proportion of the great influx of suits which followed the repeal of the stamp duties on suits below rupees 100 in 1827, and which led to the reimposition a few months afterwards, must have been the accumulative causes of many years which were thus left loose; and afford therefore but a very imperfect criterion of the permanent effect of such a measure as to what extent the quantity of business in the civil courts would in the long run be thereby increased.

I have, &c.
(signed) *E. E. Elliot*,
Acting Superintendent of Stamps.

(No. 7 of 1831.)

From *N. C. Bruce*, Esq. Superintendent of Stamps, to *John Bax*, Esq. Secretary to Government.

Sir, Bombay General Stamp Office, 30 June 1831.

Judicial Dept.

I HAVE the honour to acknowledge the receipt of Mr. Secretary Williamson's letter of the 4th instant, giving cover to a copy extract of a report from the Civil Finance Committee at Calcutta, dated the 20th September 1830, and directing me to reduce my establishment in the stamp department to the extent of rupees 2,280 per annum, and at the same time intimating that it is left with me to report to Government the amount of salary I would recommend should be granted to each individual in reference to his period of service and qualifications.

2. In reply I take the liberty of very respectfully observing that it will be impossible for me to carry the reductions in this department to the extent contemplated by the Right honourable the Governor in Council without some material change in the system now pursued in regard to the preparation of stamped paper. The Finance Committee have compared the establishment entertained at Madras with its amount here, and have shown a considerable excess on the part of the latter, notwithstanding the larger amount of collections and the greater number of collectorates which the former has to supply; but the committee do not seem to have adverted to the difference of system which obtains at the two places, which

is

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is the main cause of this difference of expense. At Madras the stamped paper is, as I am given to understand, subject to three different processes only, namely, the stamp, counterstamp and numbering; whereas here there are no less than five, every stamped paper besides the three operations above mentioned being also classed and subscribed with the name in full length of some person on the establishment, which last operation in itself alone occupies a very considerable portion of the time of every individual belonging to it.

3. If the charges of the stamp office at this presidency are to be assimilated, then, to those at Madras, I would humbly suggest that the preparation of the stamp be likewise assimilated to the system in use there; that is, that the present practice of classifying and "counter-signing," as it is termed, be discontinued, and the paper be subject in future to no other process than that of being stamped, counter-stamped, and numbered, which indeed comprises all that would appear to be necessary as a security against forgery or other fraud. Should the Honourable Board be pleased to adopt this suggestion, I shall be enabled to reduce the establishment to the extent of rupees 2,580 per annum as per margin,* which is rupees 300 a year more than what the Finance Committee have proposed.

4. In consideration, however, of the long services and very respectable characters of the head and third clerks, the former of whom would lose rupees 50, and the other rupees 20, per month by the immediate adoption of this arrangement, and in consideration also of the Stamp-office being made an exception to the general rule, which seems to have been followed in other offices, of making all the required reductions prospective, I venture to prefer an earnest request in favour of these two individuals being permitted to retain their present salaries, thus making a small portion of the proposed reduction prospective, as per margin.†

I have, &c.

(signed) *N. C. Bruce*, Superintendent of Stamps.

(True copy.)

(signed) *E. E. Elliot*, Acting Superintendent of Stamps.

* *Proposed Establishment.*

	Rupees.
Head Clerk	100
Second Clerk	50
Third Clerk	30
Fourth Clerk	25
Fifth Clerk	20
	225
Peons, Lascars, and Office Rent	193
	418

Present Establishment.

	Rupees.
Mr. Dias	150
Canoba	50
Dalvador Viegars	50
Narayen	35
L. D'Silva	30
Gunoba	20
F. D'Silva	20
Ragoonath	20
Ramchunder	15
M. Misquets	15
P. D. Rozario	15
Compositor	10
Rupees	430
Peons, Lascars, and Office Rent	203
Present	633
Proposed[1]	418
Difference	215
Or, per annum	2,580

[1] Proposed - 418
Since reduced - 39
Rupees 379

The amount cost of the establishment as it now (1836) stands.
(signed) *E. E. E.*

† Immediate reduction - - - - - 1,740
Prospective reduction - - - - - 840
Aggregate - - Rupees 2,580

From the Acting Register to the Suddur Adawlut.

Sir, 10 March 1836.

I AM directed by the Judges of the Suddur Dewannee Adawlut to acknowledge the receipt of your letter, dated 16th ultimo, referring copy of a letter from the Supreme Government, with enclosures, regarding the amendment of existing rules relative to the stamp revenue, and requesting the Judges' observations thereon. In reply I am directed to request you will state, for the information of the Right honourable the Governor in Council, that the Bombay Stamp Regulations and Schedule appear to the Judges to possess a very decided and great advantage over those of the Bengal Code, on the grounds of conciseness and perspicuity. They combine also great facility in operation, which, judging from the multiplied number of Regulations in Bengal, would appear to present an additional preference in favour of the "Elphinstone Code." The classes of the latter are few, and provide in a clear but comprehensive manner for every species of stamped instrument (whether of compact or of a judicial character), whilst the Bengal Regulations are complex and voluminous, and appear to the Judges to contain numerous nominal distinctions of instruments, which under our system are reduced to a few natural and appropriate

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appropriate classes. The only advantage in favour of the Bengal Schedule is, that in general the stamp duty is not so heavy as ours.

2. Under this view the Judges think that the only portion of the former it would be desirable to adopt, is that by which the scale of amount would be reduced in the Bombay Code.

3. On the subject of applying the stamp law to the jurisdiction of the Supreme Courts, the Judges direct me to say that on general considerations they would advocate a perfect identity of law as equally applicable to the presidencies and provinces. There may, however, be objections to this opinion, founded on local circumstances, of which the Judges are not aware; but on this point Government or the Law Commission would, they apprehend, be able to obtain correct information.

4. With regard to the mode proposed of supplying the place of a stamp by attaching a certificate to it, the Judges direct me to state that they are of opinion the projected method would be attended with many difficulties and much evil; and that if the mode at present followed under the Bombay Regulations was found objectionable, that it would be much more simple and effective to certify in red ink across the document, that the prescribed penalty having been paid, the document was to be considered as duly stamped.

I have, &c.

(signed) *W. E. Frere*, Acting Register.

From the Judge and Session Judge of Poona.

Sir, Poona Court of Adawlut, 11 March 1836.

I HAVE the honour to acknowledge the receipt of your letter, No. 232, dated the 16th of last month, with copy of a correspondence from the Supreme Government, regarding the amendment of the existing rules relative to the stamp revenue.

In perusing the suggestions contained in the correspondence, I beg to state that I am not aware of any objection to the schedule of stamp duties being made applicable to the Presidency of Bombay; and that the rules which are in force for the collection of the stamp duties should be made operative within the jurisdiction of the Supreme Court.

I never heard of any case of forgery of the Government stamps having occurred within the Bombay Presidency, but as prevention is better than cure, I should think it desirable that the use of water-marked paper should be generally adopted, and which might be easily manufactured in any one of our gaols under the superintendence of a regular paper-maker sent out from England, and which would do away with the heavy expense of commissioning it from home.

I perfectly agree with Mr. Saunders as to the inutility of the counter-stamp, but there should, I am inclined to think, be some check in the superintendent's office; and with this view I suggest (as I believe at present exists in England) the appointment of a general distributor of stamps, so that one office would be a check upon the other.

The provisions of clause 2, section 2, of the proposed enactment appear to me to afford complete protection to the revenue; at the same time, it removes the inconvenience incident to the risk and delay of transmission from the public and the persons upon whom it is levied.

I have, &c.

(signed) *A. Bell*, Judge.

From the Judge and Session Judge of Surat.

Sir, Surat Adawlut, 4 April 1836.

IN reply to your letter of the 16th of February last, on the reference from the Legislative Council of India, regarding a new Stamp Regulation for all India, I have the honour to state to the Honourable Board that I am not able to make any contrast between the existing Regulations of Bengal and Bombay, as there is no copy of Regulation X. of 1829 of the Bengal Code on the records here, and I cannot therefore give any opinion as to whether there is an objection to the schedule of stamp duties in force in Bengal being made applicable to the presidency.

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The modification proposed in the correspondence from Bengal of the mode of supplying stamps, not at first used in any instrument, is unobjectionable, and calculated to afford much facility in rectifying omissions, and not subjecting original papers to the risk of being lost or injured in any manner by transmission from a distance to the presidency by dâk.

As it cannot be expected that a person having local charge in the interior shall report on the applicability of stamp rules from the town and island of Bombay, I shall conclude, and

Have the honour to remain, Sir, &c.

(signed) *J. Sutherland*, Judge.

From the Acting Judge of Ahmednuggur.

Sir, Ahmednuggur Adawlut, 13 April 1836.

I HAVE the honour to acknowledge the receipt of your letter of the 16th February, with enclosures, likewise of that of the 6th instant, and to inform you that I am not in possession of Regulation X. of 1829 of the Bengal Code, and am therefore unable to appreciate the amendments to it; but the plan here proposed to be substituted for the stamp now required on documents that have been executed on unstamped paper appears to me unobjectionable, and will afford a facility which will be very advantageous.

I do not perceive anything in the former Stamp Regulations to prevent their adoption here; indeed they have the advantage of being more explicit on all points, and have less room for doubt than the Regulation XIII. of the Bengal Code.

I have, &c.

(signed) *B. Hutt*, Acting Judge.

SUMMARY, by the Secretary, of the Reports on the Proposed Stamp Act.

THE Judges of the Suddur Adawlut consider that the Bombay Regulation and Schedule possess a great and decided advantage over those of Bengal in their "conciseness and perspicuity;" that they combine great facility in operation; and that the classes of the "Elphinstone Code," though few, provide in a clear but comprehensive manner for every species of stamped instrument; while the Bengal Regulations are voluminous and complex, and appear to contain many nominal distinctions of instruments which, under the Bombay system, are reduced to a few natural and appropriate classes. They, however, consider the lower rates of stamp duty of the Bengal Schedule as an advantage; and this is the only portion of those Regulations which the Judges deem it desirable to adopt.

Adverting to the question of applying the stamp law to the Supreme Court, the Judges advocate on general grounds a perfect identity of law, as equally applicable to the presidency and the provinces; but are of opinion that the projected method of supplying the place of a stamp, by attaching a certificate to it, would be attended with many difficulties and much evil; and suggest that if the mode at present followed under the Bombay Regulations be deemed objectionable, it would be more simple and effective to certify in red ink across the document, that the prescribed penalty having been paid, the document was to be considered as duly stamped.

Vide Para. 4.
Vide Sec. 2. of proposed Act.

Mr. Elliot, acting superintendent of stamps, considers that the stamp laws should be introduced within the jurisdiction of the Supreme Court: is of opinion that everything that can be urged in favour of their admission into the interior applies with greater force to their introduction at the presidency, and supports his opinion chiefly with the argument that the class (principally the mercantile community) which would be affected by it, are not more, if so highly taxed as those in the interior, who, in addition to other taxes, contribute to the stamp revenue, and even much less so, if the relative means of each be considered. He, however, seems to adopt the general notion that justice is more expensive in the King's courts than in those of the Company; but as a set off against that he opposes to it the superior quality of the article.*

Mr.

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* However tenable this latter ground may be, the preceding one may be questionable if the data on which Mr. Simson has calculated the costs of a suit be correct.

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Mr. Elliot next states the amount of revenue which a committee assembled in 1827, calculated the imposition of stamp duties at the presidency would yield; observes that he sees no objection to the introduction in all its details of Regulation XII. of 1826 of the Bengal Code, so far as the presidency is concerned; but states he is incompetent to give any opinion of the expediency or otherwise of adopting the Bengal Schedule for the interior, owing to the change it would cause in the present system, though he thinks its adoption would add considerably to the stamp receipts.

The acting superintendent considers that if the stamp duties are to be levied within the jurisdiction of the Supreme Court, that water-marked paper should be used for stamps; this he recommends with the view to prevent fraud only, for he says it would cause but little saving in the establishment, and refers to a letter (copy of which accompanies) to show that it has already been reduced to as low a scale as is consistent with efficiency.

Mr. Elliot in conclusion considers the propriety, and is in favour of exempting suits of a higher grade than those which the Bengal Code exempt from the stamp duties, and quotes a passage from a minute by Mr. Elphinstone in favour of exempting suits below a hundred rupees. In support of this measure Mr. Elliot observes, that one ground of argument formerly urged against such exemption, viz., the necessity of relieving the judges from the great pressure of business which then devolved upon them, no longer exists, the appointment of native functionaries having had that effect. He also doubts whether it would increase litigation to such an extent as is generally supposed, and seems to consider the great influx of suits which followed the repeal of those duties on suits below 100 rupees in 1827, to have been the accumulated causes of many years, and therefore to afford but an imperfect criterion of the permanent effect of such a measure. The revenue commissioner states his inability to give a decided opinion on the subject, but that his impression is that the present system has worked very well, and conceives the question of adopting the Bengal Schedule of stamp duties one of a merely pecuniary nature, being aware of no local or other peculiarities which could affect it.

Vide Para. 3.

The Judge at Surat states that he is unable to contrast the Regulations of Bengal and Bombay, from not having the former, and cannot, therefore, give any opinion as to whether or not any objection exists to the application of the Bengal Schedule to this Presidency. He considers the modified mode, proposed in the correspondence from Calcutta, of supplying stamps, not at first used in any instrument, unobjectionable, and calculated to facilitate the rectifying of omissions; but offers no opinion on the question of the applicability of the stamp laws to the presidency.

Mr. Le Geyt, the acting judge at Ahmedabad, offers his opinion that the application of the provisions of section 2* of the proposed enactment, in supercession of clauses 1 and 3†, of section 13, of Regulation XVIII. of 1827, would be a decided improvement; but thinks the exceptions contained in clause 2 of the same section should be retained, as being perfectly equitable in territories so intermixed with foreign jurisdiction as are those of this presidency.

Reg. XVIII. of 1827.

Mr. Hutt, Acting Judge at Ahmednuggur, considers the proposed plan of affixing a certificate in the place of a stamp on unstamped documents, unobjectionable, and that it would be attended with an advantageous facility; he further states, that he sees nothing in the former Regulations to prevent their adoption, and adds, that they have the advantage of being more explicit on all points, and leave less room for doubt than Regulation XIII. (XVIII. is doubtless meant,) of the Bombay Code.

He no doubt means those of Bengal.

The Judge at Dharwar reports that he has no means of forming an opinion on the preference to be given to the Bengal Schedule, or otherwise.

He states the costs of a suit to be about 20 per cent. of its amount; of this about 15 per cent. is for stamps, which he considers a heavy charge for justice, particularly as it is doubled by appeal, and trebled if the case is carried to a second court of revision. He states the stamps for deeds not to be onerous, and is disposed to advocate their being required on bonds, &c. below 10 rupees. He also submits a report on the subject, formerly addressed to the Sudder Adawlut.

Vide Para. 2.

He

* For supplying the place of a stamp by attaching a certificate to the document.

† Fixing the amount of penalty, and prescribing the mode in which the stamp is to be furnished.

He is of opinion that receipts and acknowledgments ought to be stamped, and suggests that as a preventive to a stamp being used for wrong purposes, the vender should be required to write the purchaser's name on it. *Vide* Para. 3.

The only remark offered by Mr. Simson, regarding the use of water-marked paper, is that the delay in receiving the supplies from Europe may be attended with delay and consequent inconvenience. Para. 4.

With respect to the provisions of the second clause of section 2, of the proposed Act, Mr. Simson thinks that the document to which the stamp is to be affixed should in itself bear some marks of authenticity, but does not say what description they should be. He adverts to that part of the Bombay Regulation which requires any deed to be stamped at once on payment of the fine, without any reason being assigned for its not having been originally drawn out on stamped paper. This he considers faulty, as liable to create hardship and even injustice, though he does not give any instance of its having actually led to such a result. Para. 5. Para. 6.

Mr. Simson appears to consider the counter-stamp affixed at the Mint, with the addition of the signature of a covenanted servant in the zillah where the stamp is sold, as an effectual check against fraud in the Stamp-office at Bombay. Para. 7.

He considers the introduction of the stamp law within the jurisdiction of the Supreme Court, highly expedient, adding, that it would be most productive; he is also of opinion that the mercantile community of Bombay hardly bear their full share of expenses of the State, and adds that they would be obliged to contribute largely to the Mohturfa if they were living in the interior. Para. 8.

Mr. Bell, the Judge of Poona, is aware of no objection to the (Bengal) schedule of stamp duties being made applicable to Bombay, nor to the rules being made operative within the jurisdiction of the Supreme Court. Para. 2.

He approves of the general use of the water-marked paper as a preventive against forgery, and, on the score of economy, suggests its manufacture in one of the gaols, under the superintendence of a regular paper-maker, to be sent out from England. Para. 3.

Mr. Bell admits the utility of the counter-stamp, but considers a check on the superintendent's office necessary; and with this view suggests a general distributor of stamps, which would constitute one office a check on the other. Para. 4.

Finally, he is of opinion that the provisions of clause 2d, of section 2, of the proposed enactment, will protect the revenue, while it removes the risk and delay of transmission from the public and persons on whom it is levied. Para. 5.

Mr. Shaw, Judge in the Concan, has no observations to offer.

(signed) *J. P. Willoughby*,
Secretary to Government.

26 May.

The principal points for consideration appear to be—

First. The expediency or otherwise of extending the stamp laws within the jurisdiction of the Supreme Court, and the probable financial results of such a measure, if deemed expedient.

The judges of the Suddur Adawlut advocate this measure.—Mr. Elliott approves of it.—Mr. Simson considers it highly expedient.—Mr. Bell sees no objection to it.

Second. The advisability or otherwise of substituting the Bengal for the Bombay rates.

The Suddur Adawlut approve of this measure.—The revenue commissioner and the judge of Poona (Mr. Bell) see no objection to it.

Third. The question of substituting water-marked paper for the coarse material now used.

Mr. Elliot recommends this for the presidency.—Mr. Simson suspects it would be attended with delay, and, consequently, inconvenience;—and Mr. Bell approves of it.

Fourth. The expediency or otherwise of introducing the Bengal rules for conducting the details of the department.

The judges of the Sudder Adawlut prefer the Bombay rules.—Mr. Elliott does not object to them as far as the presidency is concerned.—Mr. Hutt considers the Bengal rules better than those of Bombay.

Fifth. The expediency or otherwise of exempting small suits from stamp duties *in toto*, and, if deemed expedient, the amount to which such exemption should be limited.

Mr. Elliott is in favour of, while Mr. Simson is opposed to such exemption.

Sixth. The rule prescribed by clause 2d, of section 2, of the proposed enactment, of attaching a certificate to unstamped documents, and whether it shall be done without demanding any explanation of the cause of the document not having been originally drawn out on stamp paper.

The judges of the Suddur Adawlut prefer its being certified in red ink across the document.—Mr. Sutherland and Mr. Hutt consider the plan unobjectionable.—Mr. Le Geyt considers it would be an improvement.—Mr. Simson does not object to it, but considers that the document should contain within itself some mark of authentication, and that explanation should be required.—Mr. Bell approves of the plan.

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Seventh. The two clauses of section 6, of the proposed Act, which, in the event of water-marked paper being generally adopted, provide for the exchange, within a period to be fixed, of stamp paper not bearing the water-mark device, for that bearing the said mark, may also, perhaps, be deemed worthy of consideration.

Eighth. What means appear best adapted to prevent fraud and protect the stamp revenue, if water-marked paper be not generally used.

(signed) *J. P. Willoughby,*
26 May 1836. Secretary to Government.

MINUTE by the Right honourable the Governor; dated 13th June 1836.

THE questions which the Supreme Government has been pleased to refer to us are two: first, whether the schedule of stamp duties existing on the Bengal side of India should be applied to the Bombay Presidency; the second, whether the stamp laws which are or may be established in the districts of the interior should be rendered operative within the jurisdiction of the Supreme Court of Judicature.

2. With respect to the first of these questions, the clear and strong attestation of the Judges of the Suddur Dewanee Adawlut, the highest authority in this presidency on such a subject, to the superiority of the Bombay over the Bengal stamp laws, not in a general view, but with reference to the comparatively limited sphere to which they were intended to be adopted, will, I should hope, induce the Government of India to abstain from extending to this presidency the Bengal laws in question.

3. With this Government, the opinion of the Suddur Adawlut on a point so peculiarly within their cognizance and experience, must be conclusive authority, unless there should appear to be very powerful and palpable objections to such an opinion, and of any objections bearing that character on the present occasion I am wholly unaware.

4. The judges admit, however, in one respect, the superior excellence of the Bengal Schedule. Its scale of duties is more moderate. To this extent our Bombay laws might with advantage be made to conform to those of Bengal, and should the Supreme Government be of that opinion, they might be informed that we shall be ready and willing, on requisition, to send them the draft of a reduced scale of stamp duties, to be enacted for our presidency.

5. I am not, however, aware that any enactment is positively necessary. This Government can remit taxes wholly or in part, though it cannot impose or increase them, and we might therefore of our own authority modify our existing stamp duties in the way of diminution.

6. On the expediency of the mode which the Government of India propose, of giving to instruments not originally stamped, the benefit of a stamp on payment of the proper duty, our judges express themselves in such a manner, that I should rather hope that before the suggested mode is adopted for this presidency, the experiment may be tried in Bengal with regard to the plan of requiring it to be explained why the instrument was not stamped in the first instance; this has hitherto, as I understand, been the rule in Bengal; but I also understand from these papers that it is now to be abolished, and I entirely concur in the propriety of that measure.

7. The suggestion that water-marked paper from Europe should alone be used for stamps, and that the water-mark should express what is the price of the stamp, is no doubt worthy of consideration. I feel no difficulty, however, in saying that there does not seem to be any demand for such a measure in this presidency; and, if not, the expensiveness which is admitted to attach to it, and the inconvenience which may arise from occasional failures in the supply of paper as pointed out by the Judge of Dharwar (in the fourth para. of his letter) seem great objections to the adoption of it. That it would for a time cut off the possibility of committing one class of fraud on the revenue, I have no doubt; some years might be expected to elapse before the water-marked paper would be counterfeited in this country. But the frauds alluded to have never, as far as I know, been prevalent in our presidency. The acting superintendent of stamps declares (in para. 8 of his letter) that not a single instance of it has ever come to his knowledge, and, as he states (para. 2) that he writes with the entire approval of

Mr.

Mr. Bruce, in that department, superintendent of stamps, it is to be inferred that the long and vigilant service of Mr. Bruce in that department has not supplied him with any such instance.

8. It must, I fear, be admitted that if stamp duties are introduced within the jurisdiction of the Supreme Court, the chances of fraud will be increased; but for reasons which I shall state, I trust that it will not be thought necessary to introduce them there.

9. I take the opportunity of remarking on a question which, though not directly submitted to us from Bengal, bears a relation to the present subject, and has attracted the attention and divided the opinions of some of the officers whose correspondence is before the Board. The acting superintendent of stamps is in favour of exempting small suits from stamp duties, and would even (para. 9) draw the line higher for this presidency than it is drawn for Bengal. The Judge of Dharwar objects to any exemption of the kind.

10. It would be owned that Mr. Simson, in the letter of which he incloses a copy, has argued with a good deal of force on the point in question. The poorer ryots are universally in debt to the money-lenders, who drag them, when they think proper, into a court of justice; and he contends that to exempt petty litigation from the stamp duties, is to facilitate this sort of oppression. The money-lenders, however, alluded to are men who make a traffic of plundering the ryots; and I much doubt that such persons would be materially hampered in their operation by any stamp tax that could be fairly laid on judicial proceedings; circumstances which (I should hope) are in a course of amendment, give them a vast command over the thriftless, thoughtless, penniless ryot. I greatly fear, therefore, that the only effect of the measure suggested would be to induce the wary to add the increased expenses of recovering the debt at law to the amount of interest which the ryot was to pay.

11. I see nothing consequently in this argument which materially affects the general proposition adopted on the present subject by most thinking men, viz., that a tax on small litigation is a tax on the complaints of the poor. Mr. Elphinstone is well quoted by the acting superintendent of stamps, as giving to the proposition the full sanction of his high authority. "I conceive a tax on complaints," says that enlightened person, "from the lowest order of natives, especially ryots, to be the very worst tax that it is possible to lay on a people. If rupees 1,50,000, or rupees 15,00,000 are to be raised, I would rather lay it on trade, on opium, on salt, on salaries, or on anything rather than suits under rupees 100."

12. I have now to remark on the second question proposed by the Supreme Government, viz., whether the stamp duties imposed in the interior should also be established within the Supreme Court of Judicature.

13. It will be observed that most of the authorities are combined in favour of this measure, and that none of them oppose it; but the reasonings by which they recommend it are short, vague, and unsatisfactory.

14. That there should be a perfect identity of law between the presidencies and the provinces respectively attached to them, is a proposition which might be admitted without greatly affecting the merits of the question; while the Supreme Court of Judicature submit it is preposterous to suppose that the law of the presidencies and that of the provinces can be made identical by imposing on them a few stamp duties in common. Besides which, these duties, so far as they operated immediately in law proceedings, would be identical only in name, the process of legal administration being so effectually different in the two cases, the same nominal tax might affect them in the most opposite ways.

15. Then it is said that the mercantile community of Bombay, as compared with the agricultural body in the interior, hardly contributes its full share to the revenues of the State. Nothing can, in my opinion, be looser than such comparisons. In order to estimate how much any class is taxed for the benefit of the State, the taxes which reached it indirectly must of course be included. That the island of Bombay, the great seat of demand and consumption for the whole presidency, pays indirectly a great proportion of the taxes which are in different shapes levied on the soil, or on the produce of the interior, is a position which cannot require any proof. What that proportion is, I know not, but unless some attempt be made to compute it, be it more or less roughly, it is plainly a fallacy to compare the fiscal burden of Bombay with those of the districts.

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16. The acting superintendent of stamps admits that in one respect, at least, the residents of Bombay are worse off than those of the interior. They pay dearer for their law; but then, he rather pleasantly adds, the law for which they so pay, is or ought to be, of a better quality. I think we are very fortunate in the Judges of our Supreme Court; I respect them highly; their places were never, I believe, better filled. But I am not prepared to admit that the justice which they administer is as much more excellent than the justice dispensed in the interior, as it is palpably dearer.

17. Mr. Eden Elliot justly designates the community of Bombay by the epithet "mercantile." Here, in fact, is one of my main objections to the introduction of the proposed taxes into the presidency. It is idle to talk of these being the same taxes as are laid on the people of the interior. A stamp tax, by its very nature, presses much harder on a mercantile population than on any other. The reason is, because the burden pre-eminently falls on the circulation of property, which is the life and soul of all commerce.

18. For these reasons, I am not prepared to acquiesce in the plan of establishing stamp duties within the jurisdiction of the Supreme Court, and thinking as I do, that such duties would be felt to be oppressive, I acknowledge that their large estimated amount (five lacs and a half), far from propitiating me to them, excites in me a contrary feeling.

19. I now close. Should the Board be pleased to concur in the remarks which I have offered, the substance of them, so far as they apply to the letter from the Supreme Government, together with copies of the other letters, might be communicated to that authority.

(signed) *R. Grant.*

MINUTE by the Honourable Mr. *Ironside*; dated 18th June.

I FULLY concur with the Right honourable the Governor in the view he has taken of the important subject treated of in the above Minute.

(signed) *E. Ironside.*

MINUTE by the Honourable Mr. *Farish*; dated 20th June.

I CONCUR in the view taken of the proposed modification of the stamp law in the Right honourable the Governor's Minute, except as relates in part to the introduction of stamps at the presidency.

For the processes of law in the Supreme Court, it would be inexpedient, if not impracticable, and in this I quite agree with the Governor, because when introduced into the zillah courts, it must be presumed that if the same stamps were introduced in lieu of fees, the salaries equivalent to the fees would much exceed the receipts from stamps.

I cannot, however, see the force of the objection against the stamps in Appendix B. of the Bombay Regulation, and that on a sunnud given by Government in Appendix E. as being greater than the urgency that might be presumed to exist from an increase of revenue from a tax which, though no doubt it would be very loudly complained against, would, after the inconvenience of its first introduction, and the attendant excitation of feeling had subsided, be as little felt as any other that could be devised. While the tax exists in the interior, and not here, the people of Bombay are so far more lightly taxed than their neighbours; and if it be a proper source of revenue from the one, it would be also from the other.

The expediency of a tax which will for a considerable period be felt as obnoxious, and which it may therefore be expensive to enforce, is another consideration; the experiment has been begun at Calcutta, and the result of that will show, in some measure, the expediency of it as a financial measure.

I do not advocate it, unless it be introduced there, and it be considered by the Government of India necessary to raise an additional amount of revenue, such as this tax would realize. It seems to me that the taxes on trade at the three presidencies, as being parts of one great empire, should be as nearly as possible the same, and therefore, if the Stamp Act be not introduced and effectually put in execution for the purpose I have stated at Calcutta, it ought not in Bombay.

(signed) *J. Farish.*

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Further MINUTE by the Right Honourable the Governor, subscribed to by the Board, dated 23d June.

THIS is a matter which must be settled by the Government of India, to whom, I conceive, the Minutes recorded at the Board had better be submitted.

(signed) *R. Grant.*

(True extract.)
(signed) *J. P. Willoughby,*
Secretary to Government.

(No. 5.)

EXTRACT from the Proceedings of the Right honourable the Governor-general in Council in the Legislative Department, under date the 6th March 1837.

Sep. India Cons. 20 October 1837. No. 14.

READ again the Consultation of the 26th October 1835, No. 4 and 6, on the subject of altering certain portions of Regulations XII. of 1826 and X. of 1829.

Read also the undermentioned papers, viz., Letter from the Chief Secretary to the Government of Fort St. George, dated the 18th March 1836, with enclosed letter from the Secretary to the Government of Bombay, dated the 12th July 1836, with enclosures, on the question of the applicability of the schedule of stamp duties existing within the jurisdiction of the Supreme Court.

Letter from the Officiating Secretary to the Indian Law Commission, dated the 21st February last, with enclosure, on the subject of amending and consolidating the whole of the stamp laws of the Bengal and Agra presidencies.

Resolution:

It appearing from the replies received from the presidencies of Fort St. George and Bombay, that the rules which it is proposed to enact under the presidency of Fort William, relative to the stamp revenue, are not applicable to the state of things at those presidencies, the consideration of any new rules as regards this branch of the public revenue at the other presidencies may with propriety be suspended.

Order:

Ordered, in the meantime, that a copy of the letter from the officiating Secretary to the Indian Law Commission, together with the several papers therein referred to, in original, be sent to the General Department, with a view to the consideration in that department of the draft as amended, subsequent to the date of its receipt, with the extract from the General Department, under date the 23d September 1835, and that original papers received with that extract be returned.

(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

(No. 5.)

From *J. P. Grant*, Esq. Officiating Secretary, Indian Law Commission, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, Legislative Department.

Sep. India Cons. 20 October 1837. No. 15, Enclosure.

Sir, Indian Law Commission, 21 February 1837.

I AM desired by the Indian Law Commissioners to acknowledge the receipt of your letter, No. 40, dated the 26th October 1835, with accompaniments, containing instructions for the preparation of the draft of an Act for amending and consolidating the whole of the stamp laws of the Bengal and Agra presidencies.

2. In reply, I am directed to transmit to you the papers noted below*, for

* 1. Copy of a letter to the Secretary to the Board of Customs, Salt and Opium, of 22 April 1836, with accompaniments in original, viz. Draft Stamp Act, and Schedules (A.) and (B.).

2. Letter from the Acting Secretary to the Board of Customs, Salt and Opium, dated 27 July 1836, with accompaniments, viz. Paper of Observations and Suggestions on the draft of the Act;

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for the purpose of being laid before the Right honourable the Governor-general in Council.

3. Before adverting to the contents of these papers, I am instructed to remark that the subject was such as to require a good deal of research previous to the preparation of the draft of a law upon it, and that after the draft of a law was prepared, the Commissioners thought it advisable to send it to the Board having the superintendence of the stamp revenue, for such remarks and suggestions as their knowledge and experience would afford. That reference was made in the beginning of my last, but in consequence of the extraordinary pressure of business before the Board, occasioned by the change in the customs law, and other causes, more particularly explained in the letter from their Acting Secretary, the papers were not received back until the end of July; subsequently the engrossing occupation of the preparation of the criminal code, together with the illness of members of the Commission, will, the Commissioners hope, be considered by the Government to excuse the delay that has taken place in submitting their Report on this subject.

Paras. 2 and 3, 27 July 1836.

4. It does not appear to the Commissioners to be necessary to enter into any explanation of the reasons for the provisions of the Act, and they direct me to refer you to my predecessor's letter to the Board of Customs for an exposition of the views according to which the schedules were framed.

Paras. 3 and 12, 22 April 1836.

The observations and suggestions offered by the Board on the drafts of the Act and schedules have been collected in three separate papers, for the purpose of easy reference; and in the opposite columns will be found the remarks of the Commissioners on those suggestions. On the supposition that Schedule (B.) is retained, the Government will observe that there are several propositions of the Board connected with it, in which the Commissioners have expressed their concurrence.

5. The Commissioners could wish that they had it in their power to submit the draft of a stamp law exactly in the shape in which they could recommend that it should be passed. They hope, however, that in what they have done, it will be found that they have accomplished substantially the purpose of Government in employing their services in this particular work. The Government must be aware that in settling the details of a complicated and extensive revenue law of this description, it must be necessary to seek for aid from persons practically conversant with the management of this branch of the revenue.

The Commissioners could not yet submit decided recommendations with regard to some of the points of detail which have arisen, without further reference to the Board of Customs; and considering the state in which the business now is, they conceive that it will be the most advantageous course, as they have also reason to believe that it will be the course most agreeable to the wishes of Government, that they should not delay their report for that purpose, but leave it to the Government itself to make the further reference to the Board, should they consider it to be necessary.

6. With regard to the 4th paragraph of your letter under acknowledgment, in which notice is taken of an intended reference to the Government of Fort St. George and Bombay on the subject of the stamp laws, the Commissioners beg to remark that no communication has been received from the Supreme Government of the result of those references. It is undoubtedly expedient, the Commissioners think, to extend to the jurisdiction of the Supreme Courts at Madras and Bombay the general rules for the collection of the stamp duties established, or which may be established, under those presidencies, that the operation of the law may be uniform, and that the residents within those jurisdictions should not enjoy a virtual exemption from it.

7. But to the proposed assimilation of the stamp duties under the presidency of Fort St. George to those existing on this side of India, Mr. Macleod is of opinion that

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Paper of Observations and Suggestions on the draft of Schedule (A.); Paper of Omissions in ditto; draft of Schedule (A.), prepared by a native officer attached to the office of the Collector of Calcutta Stamps; Paper of Observations and Suggestions on the draft of Schedule (B.).

3. Letter from the Acting Secretary to the Board of Customs, Salt and Opium, of 4 October 1836.

4 & 5. Revised drafts of Stamp Act and Schedule (A.).

6, 7, & 8. Papers of Remarks on the Observations and Suggestions of the Board of Customs, Salt and Opium, relative to the original draft of Act and Schedules (A.) and (B.).

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that strong objections exist. The stamp duties, he observes, at present are lighter under the Madras Government than under that of Bengal; but the taxation generally is very much heavier; and until the Madras territories receive some relief on one or more of those points in which the pressure upon them is more severe than on the territories of Bengal, he thinks it would not be just to deprive them of the small advantage which they have in the matter of stamp duties.

8. The original papers received with your letter are herewith returned.

The following letters in original have been returned to the Board of Customs, Salt and Opium, copies of which are herewith transmitted:—From Superintendent of Stamps to Board, 28 November 1834; Draft Letter from Board to Government, 16 January 1835; Reply to above, 10 February 1835.

I have, &c.

(signed) *J. P. Grant*, Officiating Secretary.

(A true copy.)

(signed) *W. H. Macnaghten*, Secretary to the Government of India.

(No. 7.)

From *F. Millett*, Esq. Secretary, Indian Law Commission, to *W. R. Young*, Esq. Secretary to the Board of Customs, Salt and Opium, Fort William.

Sep. India Cons. 20 October 1837. No. 16, Enclosure.

Sir, Indian Law Commission, 22d April 1836.

By direction of the Indian Law Commissioners, I have the honour to transmit to you, for the purpose of being laid before the Board of Customs, Salt and Opium, the accompanying drafts of a new Stamp Act, and its schedules, which have been prepared by the Commission under the orders of Government, copy of which orders I likewise enclose.

Letter from the Secretary to the Government of India, dated 26 October 1835.

2. The object of the Commissioners in making this reference is, to have the advantage of such remarks and suggestions as the knowledge and experience of the Board will afford before they proceed to the final revision of the drafts, previous to submitting them for the consideration of Government, and I am accordingly desired to express their request that the Board will favour them with their sentiments thereon, and with any suggestions for their improvement which may occur to them.

3. In drawing Schedule (A.), the Commissioners have taken the schedule of Regulation X. 1829, for a groundwork, in preference to that attached to Regulation XII. 1826, as being the most recent and containing the most equitable provisions. They have deemed it unadvisable to make any material changes, and have confined themselves to such minor alterations of phraseology and arrangement as were necessary, in consequence of the sense in which the word "stamp" is employed in the proposed Act, or desirable for the sake of perspicuity.

4. I proceed to notice some points in this schedule on which the Commissioners more particularly request the observations of the Board.

5. (A.) Second exemption to No. 1.

It does not clearly appear whether this exemption, which, as the draft now stands, is copied into it from the schedule of Regulation X. 1829, is intended to apply only to agreements between merchants on the one part, and persons not merchants on the other, or also to either of these two other descriptions of agreements, namely, agreements in which both parties are merchants, and agreements in which neither of the parties are merchants. In the schedule to Regulation XII. 1826, the corresponding provision differs only inasmuch as it restricts the exemption to agreements made between persons residing 40 miles from each other. The Commissioners wish to be informed what construction of this exemption has been

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been observed in practice, and whether any reason occurs to the Board why any qualification, as to the descriptions of persons contracting, should be retained; likewise whether it would be expedient to adopt the limitation in regard to the residence of the parties prescribed in the Calcutta schedule, or preserving the principle of that limitation, to fix a less distance for the purpose of it.

6. (B.) No. 2. This provision has been adopted from the Calcutta schedule, but the Commissioners are doubtful as to the necessity of retaining it, or, if it be retained, of the propriety of imposing an uniform stamp of eight rupees on such transactions.

7. (C.) Exemption, "Foreign bills of exchange drawn in sets."

The Commissioners request to be informed of the exact signification of the terms "foreign bills" as here used, and whether there is any good reason for confining the exemption to such foreign bills as are drawn in sets.

8. (D.) In the schedule attached to Regulation XII. 1826, provision is made for a stamp duty of one rupee on bills of lading for any goods to be exported. The Commissioners have omitted this clause, because the present schedule being of general application, the rule, if preserved, would include bills of lading for goods exported by sea from a provincial port, and might be held to extend also to bills of lading for goods exported either by land or water from the territories of the presidency of Fort William to those of any neighbouring presidency or state, all of which writings are now free of tax.

9. (E.) Separate provisions are made in the Calcutta schedule for bonds taken as collateral security with "some deed or instrument that has paid the *ad valorem* duty," &c. and "bonds of indemnity," and both are charged with a stamp duty of eight rupees. These provisions do not appear in the schedule of Regulation X. 1829, and the Commissioners not being aware that they are necessary, have omitted them in the draft of the new schedule. If the rule respecting collateral bonds be preserved, the Commissioners are of opinion that the stamp required for them should be regulated as in the analogous cases of collateral instruments in Nos. 16 and 35.

10. (F.) The Commissioners have endeavoured to express what appears to them to be the intention of the corresponding provision in the schedule of Regulation X. 1829, but they are not quite certain that they have put the right construction upon it. They conceive it to have been meant that when the property constituting the subject of partition is divided otherwise than in the proportion which the sharers are respectively entitled to, and a payment of money is consequently required to adjust the shares, the stamp for each sharer's copy of the deed of partition should be of the joint values of the stamp which would have been required for it, had the subject of partition been so divided as at once to give each sharer his just share, and of the stamp for a conveyance for property of the value of the payment so required. But this is not clear from the terms of the provision referred to.

Another difficulty arises also in regard to that provision, from the mention of a principal deed. According to the primary rule it should seem that the contents of every sharer's copy of the deed of partition should exactly correspond, each copy being in fact the counterpart of every other. It therefore does not appear what room there is for distinguishing any particular one as the principal deed for the purpose of the additional stamp required.

11. (G.) "Receipts for money deposited in any bank, &c. &c."

The Commissioners have preferred drawing out a distinct table for these receipts to declaring that they shall be deemed and taken to be promissory notes. They entertain, however, great doubts as to the expediency of the provision. They are not aware that receipts of the kind in question usually contain any stipulation for the payment of interest; that condition, where it does not exist, is generally, the Commissioners believe, either implied by the custom of the bank or agency, or settled by specific agreement. At any rate, it seems improbable that after the operation of this rule shall have commenced, there will be many instances in which such receipts will contain any stipulation for the payment of interest, and the provision will, therefore, fail of its effects.

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12. The Commissioners entertain great objections to the imposition of stamp duties upon legal proceedings, and until the general question of the expediency of this measure shall be decided by competent authority, they think it preferable not to interfere with the rules at present existing on the subject; they have consequently abstained generally from making any alteration in the Schedule (B.) of Regulation X. of 1829, either of substance or expression, excepting so far as was necessary to embody any rules in force which were enacted subsequently to the framing of that schedule, or to meet the altered signification of the word "stamp," except also in the cases noticed in the following paragraph:

13. (H.) "When executed between individuals, &c. &c." The reference to Schedule (A.) for security bonds, &c., not executed by order of court, has been omitted, as appearing to the Commissioners superfluous; such instruments fall necessarily under the proper heads in Schedule (A.) where reference is already made to similar instruments when taken by or by order of any court, &c. (*See* No. 12, Schedule (A.)

14. (I.) "And each sheet shall be written," &c. The specification of the size of the copy paper has not been inserted in the draft schedule, because that is liable to variation at the discretion of the Governor-general in Council, under the third section of the Act, and it will be the duty of all public officers to take care that no copies are furnished from their offices except upon stamps of the kind prescribed for that purpose.

I have, &c.

(signed) *F. Millett*, Secretary.

P.S.—The return of the drafts is requested when they are no longer required.

(Copy.)

(signed) *J. P. Grant*, Officiating Secretary.

Sep. India Cons. 20 Oct. 1837. No. 17. Enclosure.

Draft Stamp Act.

It is hereby enacted, that from the day of Regulation XII. of 1826 (*a*), and Regulation X. of 1829, of the Bengal Code, are repealed, except in so far as they rescind other Regulations, or parts of other Regulations, and except (*b*) as regards matters which may have taken place before that day; and that the following provisions of this Act shall take effect from the same day.

See (*a*) p. 441.

See (*b*) p. 441.

2. And it is enacted, that for every instrument or writing which shall be executed after the said day, and which shall be of any of the kinds specified as requiring stamps by the Schedule (A.) annexed to this Act, there shall be payable to Government a stamp duty of the amount indicated in the said schedule, to be proper for such instrument or writing, if one or more of the parties thereto be at the time of executing it within the limits of the territories (*c*) subject to the Presidency of Fort William, in Bengal, or have passed those limits for the purpose of evading the provision.

See (*c*) p. 441.

3. And it is enacted, that within the territories subject to the government of the East India Company, no instrument or writing for which such duty shall be payable under the second section of this Act, shall be received as creating, transferring, or extinguishing any right or obligation, or as evidence in any civil proceeding in any court of justice, whether established by his Majesty's charter or otherwise, or shall be registered in any public office, or authenticated by any public officer, unless such instrument or writing either be upon such a stamp (*d*) of a value not less than that indicated to be proper for it by the said schedule as the Governor-general of India in Council may have appointed by notice in the Government Gazette, not less than one month previously to the execution of such instrument or writing, or be accompanied with a copy thereof upon a stamp,

See (*d*) p. 441.

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a stamp, such as may have been so appointed, of ten times the value so indicated.

4. And it is enacted, that within the territories subject to the government of the East India Company no larger sum shall in any court of justice, whether established by his Majesty's charter or otherwise, be recoverable by reason of any instrument or writing for which an optional stamp, indicated to be proper by the said schedule, than the largest sum for which, if specifically stated in an instrument or writing of the same denomination, the stamp actually used under the option so given would be of sufficient value.

5. Provided also, that it shall be lawful for the Governor-general of India in Council to compound with any person or company for the stamp revenue, derivable from the promissory notes (*e*) issued by such person or company, and that nothing in the 3d and 4th sections of this Act shall apply to promissory notes (*e*) in regard to which such composition shall have been notified in the Government Gazette (*f*).

See (*e*) p. 441.

See (*f*) p. 442.

6. And it is enacted, that within the territories subject to the Presidency of Fort William, in Bengal, no instrument or writing of any of the kinds specified as requiring stamps in the Schedule (B.) annexed to this Act, shall be filed, exhibited, or recorded in any court of justice, with respect to which court such instrument or writing is required by Schedule (B.) to have a stamp, or shall be received or furnished by any public officer, unless such instrument or writing be upon such a stamp of a value not less than that indicated to be proper for it by the said Schedule (B.), as the Governor-general of India in Council may have appointed by any notice in the Government Gazette, not less than one month previously to the presentation of such instrument or writing to the court, for the purpose of being filed, exhibited, or recorded.

7. And it is enacted, that every provision contained in either of the schedules annexed to this Act shall be of the same force as if it were contained in the body of the Act.

8. And it is enacted, that the Governor-general of India in Council shall appoint, or cause to be appointed, such officers with such duties, and at such places as may be necessary for the collection of the stamp revenue, and for ensuring to the venders of stamps a supply thereof sufficient for the public convenience, and shall license, or cause to be licensed, as many venders of stamps as may be sufficient for the public convenience.

9. And it is enacted, that every vender of stamps shall at all times have his license, together with the schedules annexed to this Act, stuck up in a conspicuous situation in the place where he sells the stamps, on pain of a fine not exceeding 50 rupees.

10. And it is enacted, that every vender of stamps shall write on the back (*g*) of each stamp which he issues, the date of issue, the name (*h*) of the person to whom it is issued, and his own ordinary signature, on pain of a fine not exceeding 100 rupees.

See (*g*) p. 442.

See (*h*) p. 442.

11. And it is enacted, that any vender who shall knowingly write a false date or name on the back (*i*) of any stamp, shall be punished by a fine not exceeding 500 rupees, and (*j*) by imprisonment (*k*), not exceeding three months, or by both.

See (*i*) p. 442.

See (*j*) & (*k*) p. 442.

12. And it is enacted, that every vender of stamps shall, without delay, issue such stamps, if he have them in his possession, for sale, as any person tendering the value in any currency which the vender is duly authorized to receive in payment for stamps may apply for on pain of a fine not exceeding 100 rupees.

13. And it is enacted, that any vender who shall demand or accept for any stamp any consideration other than the value thereof, in such currency as he is duly authorized to receive in payment for stamps, shall be punished by a fine not exceeding 100 rupees (*l*).

See (*l*) p. 442.

14. And it is enacted, that any vender who shall demand or accept for any stamp any consideration exceeding the value of such stamp, shall be punished by imprisonment for a period not exceeding six months (*m*), or by a fine not exceeding

See (*m*) p. 442.

exceeding ten times the value so demanded or accepted, or by both; and that it shall be in the discretion of the court or officer passing the sentence to direct the value of the excess to be refunded out of such fine to any person from whom such excessive consideration may have been accepted.

15. And it is enacted, that any vender or other person who, after any period which may have been appointed by the Governor-general in Council for the commencement of the use of new stamps, shall sell any old stamps, shall be punished by a fine not exceeding 100 rupees.

16. And it is enacted, that any vender who upon the determination or resignation of his license, shall not within a reasonable time (*n*), make over to some officer duly authorized to receive them, accounts of all his transactions in relation to stamps, kept according to the provisions of any bond he may have entered into, together with any stamps remaining or which ought to be remaining in his hands, and any balance of cash which may be due from him to Government on the above-mentioned accounts, shall be liable to a fine not exceeding 500 rupees: provided always, that no vender shall by the payment of such fine be exempt from any punishment provided by the existing law for any embezzlement of which he may have been guilty, or from such proceeding as by section 18 of this Act, the collector or other officer in charge of the stamp revenue of the district (*o*), is empowered to adopt for the recovery of any stamps or balance of cash remaining (*p*) in the hands of such vender.

See (*n*) p. 442.

See (*o*) p. 442.

See (*p*) p. 442.

17. And it is enacted, that upon the death of any vender, his executors or administrators, or in case there be no executor or administrator, any other person in possession of his effects, shall, upon demand being made by a duly authorized officer, make over, within a reasonable time (*q*), to such officer any stamps which the deceased vender may have received, and not have issued (*r*) at the time of his death, and any accounts of the transactions of the deceased vender in relation to stamps which may have been kept according to the provisions of any bond such vender may have entered into, of which stamps and accounts such executor, administrator or other person may have the possession or be able to obtain the possession, on pain of a fine not exceeding 500 rupees (*s*).

See (*q*) p. 442.

See (*r*) p. 442.

See (*s*) p. 442.

18. And it is enacted, that if any vender shall refuse or omit to render (*t*) any accounts required by the provisions of any bond he may have entered into, or to permit the collector of the (*u*) district or other officer in charge of the stamp revenue (*u*) of the district to inspect his accounts or to examine the store of stamps in his possession, it shall be lawful for the said collector or other officer to proceed against the said vender (*v*), or his sureties (*w*) for the recovery of the value of the balance of stamps standing against the vender in the books of the said collecter or other officer, or for the recovery of the balance of money standing against the said vender in the said books, in the same manner as the collector (*x*) is authorized by law to proceed against Suddur farmers or their sureties for arrears of revenue (*y*).

See (*t*) p. 442.

See (*u*) p. 442.

See (*v*) & (*w*) p. 443.

See (*x*) p. 443.

See (*y*) p. 443.

19. And it is enacted, that no person not being a vender of stamps duly appointed, shall sell any stamp, unless it have been in an authorized manner obtained, for use and not for sale, under pain of a fine not exceeding 100 rupees.

20. And it is enacted, that when any stamp shall have been rendered useless by accident, or by the writing of any words with the intention of forming any instrument (*z*) it shall be in the discretion of any Board or officer authorized by Government in that behalf to cause to be issued in exchange for the stamp so rendered useless, a stamp (*aa*) of equal value; and the officer or vender issuing such stamp (*aa*), shall write on the back thereof (*ab*) the date of issue, the name (*ab*) of the person to whom it is issued, and his own ordinary signature, on pain of a fine not exceeding 100 rupees (*ac*).

See (*z*) p. 443.

See (*aa*) p. 443.

See (*ab*) p. 443.

See (*ac*) p. 443.

Counterfeit Stamp.

21. And it is enacted, that if any person shall discover that any instrument or writing in his possession which requires a stamp is upon a counterfeit of a stamp of adequate value, and shall forthwith inform the collector or other officer in charge of the stamp revenue of the (*ad*) district in which the counterfeit was issued, and shall prove to the satisfaction of such collector or other officer that such counterfeit was purchased from a licensed vender,

See (*ad*) p. 443.

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vender, he shall be entitled to be furnished gratis with a stamp of the value requisite under section 3 of this Act for a copy of the instrument or writing, but shall not be permitted to take such stamp away from the office of the collector or other officer until such copy has been made upon it.

Stamp of inferior value.

See (*ae*) p. 443.

22. (*ae*) And it is enacted, that any person being in possession of any instrument or writing which is upon a stamp of inferior value to the proper stamp, shall, upon application to any collector or other officer in charge of the stamp revenue (of a district), be entitled to be furnished with a stamp of ten times the value of the proper stamp, upon payment of the difference between the value of the stamp with which he is so entitled to be furnished, and that of the stamp on which the instrument or writing is.

See (*af*) p. 443.

23. And it is enacted, that any person who shall fraudulently counterfeit any stamp, or shall make or use any die for that purpose, or who shall fraudulently issue or expose for sale any counterfeit stamp, or who shall fraudulently use any counterfeit stamp (*af*), shall be punished by imprisonment with or without hard labour, for a term of not less than two years, nor more than seven years.

See (*ag*) p. 443.

See (*ah*) p. 443.

24. And it is enacted, that the expense of providing the proper stamp whereon to write any receipt shall be borne by the party giving the receipt, and that if a receipt on a (*ag*) stamp be refused, it shall be lawful for the party to whom the receipt is to be given to (*ah*) provide the stamp, and to deduct its value in making the payment.

See (*ai*) p. 443.

25. First, And it is enacted, that all offences punishable by this Act, when committed by licensed venders, except the offences punishable by section 23, shall be tried by such court or (*ai*) officer as the Governor-general in Council shall from time to time appoint for that purpose.

Second, And that the offences punishable by section 23, when committed by any person who at the time of committing them shall be subject to the criminal jurisdiction of the Supreme Court established at Calcutta by his Majesty's charter, shall be tried by that court, which shall deal with the said offences as misdemeanors; and if committed by any other person, such offences shall be tried by the session judge of the zillah or city in which they shall have been committed.

Third, And that all offences punishable by this Act, except the offences punishable by section 23, shall, when committed by any person not a licensed vender, be tried by one or more of the justices of the peace for the town of Calcutta, if committed within the limits of the town of Calcutta, and if committed beyond those limits shall be tried by the magistrate or joint magistrate within whose jurisdiction they shall have been committed.

See (*aj*) p. 443.

26. And it is enacted, that if a person sentenced to any fine under the provisions of this Act, shall not pay the fine to which he shall be sentenced, it shall be lawful for the officer or court who tried him to commit him to prison for a term not exceeding three months (*aj*).

27. And it is declared, that no provision of this Act is inapplicable to females by reason of the exclusive use of masculine nouns or pronouns.

See (*ak*) p. 443.

28. And it is declared that throughout this Act (*ak*), the word "stamp" is used to signify a stamped piece of paper or other material for writing on; and that by the "value" of a stamp is meant a sum indicated by words or figures duly impressed upon such piece of paper or other material.

29. And it is hereby declared that throughout this Act, and the schedules annexed to it, the word "rupee" is used to signify the Company's rupee.

(signed) *F. Millett*,
Secretary.

Indian Law Commission,
22 April 1836.

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Sep. India Cons.
20 Oct. 1837.
No. 18.
Enclosure.

Schedule (A).

Specifying Instruments and Writings which require Stamps, and indicating the proper Stamps for those Instruments and Writings.

	STAMP REQUIRED.	
1. Agreement (ikrar) or any minute or memorandum of an agreement not otherwise provided for in this schedule, whether the same be only evidence of a contract or obligatory upon the party:		
If relating to matters capable of valuation, and with the value stated - - - - - - - - - - - -	The same stamp as for a bond for the payment of the amount of the value stated.	
If for a monthly or annual payment (*a*) - - - -	The same stamp as for a bond for the amount of 10 years' payment, or of the total sum secured, if less.	*See* (*a*) p. 444.
If for the performance of any legal act, or for a purpose not restricted to nor specifying any amount - - - -	An optional stamp. *See* sec. 4 of the Act.	
Exemptions.		
Agreement for the hire of labour.		
All agreements (*Ab*) made by letter through the public dawk between merchants and other persons.		*See* (*Ab*) p. 444.
2. Assignments (*Bc*), if not of the nature specified under the heads conveyances and settlements, nor specially exempted - -	*Rs.* *a.* 8 –	*See* (*Bc*) p. 444.

3. Bills of exchange, drafts, promissory notes, hoondees, teeps, burats, and other orders or obligations for the payment of money (not being bonds), (tumusooks), nor instruments or writings bearing the attestation of one or more witnesses. If payable within the territories of the presidency of Fort William at sight or on demand, or at any period not exceeding one year after date or sight:

	At Sight or on Demand, or not exceeding Three Months after Date or Sight	Exceeding Three Months after Date or Sight, and not exceeding One Year
	Rs. *a.*	*Rs.* *a.*
If for a sum of money not exceeding 25 rupees - - -	– 1	– 2
Above 25 rupees and not exceeding 50 „ - - -	– 2	– 4
50 „ - - ditto - 100 „ - - -	– 4	– 8
100 „ - - ditto - 200 „ - - -	– 8	– 12
200 „ - - ditto - 400 „ - - -	– 12	1 –
400 „ - - ditto - 800 „ - - -	1 –	1 8
800 „ - - ditto - 1,600 „ - - -	1 8	2 –
1,600 „ - - ditto - 3,000 „ - - -	2 –	2 8
3,000 „ - - ditto - 5,000 „ - - -	2 8	4 –
5,000 „ - - ditto - 10,000 „ - - -	4 –	6 –
10,000 „ - - ditto - 20,000 „ - - -	6 –	8 –
20,000 „ - - ditto - 30,000 „ - - -	8 –	12 –
30,000 „ - - ditto - 50,000 „ - - -	12 –	16 –
50,000 „ - - ditto - 100,000 „ - - -	16 –	20 –
100,000 „ - - - - - - - - -	20 –	25 –

If payable out of the territories of the Presidency of Fort William, at whatever date - - - - -	The same stamp as for the same instruments payable within the territories at a period not exceeding three months after date or sight.	
4. Any of the instruments described in No. 3, intended to be reissued - - - - - - - - - - -	The same stamp as for promissory notes (*d*) payable at a period exceeding three months after date or sight.	*See* (*d*) p. 444
5. (*e*) Any of the instruments described in No. 3, of date exceeding one year - - - - - - - - - -	The same stamp as for bonds for the payment of the same amount.	*See* (*e*) p. 444.

(*continued*)

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STAMP REQUIRED.

Exemptions.

See (*f*) p. 444. Bills of exchange (*f*) or hoondies for any sum of money, if drawn *bonâ fide* from any place distant more than 100 miles from the place where the same are made payable, and not negotiated after acceptance; also foreign bills of exchange drawn in sets (*Cg*). *See* (*Cg*) p. 444.

Provided, however, that if any bill or bills of exchange, drawn in any part of the continent of India, and made payable in any part of the territories subject to the Presidency of Fort William, shall be negotiated therein after acceptance, or be in any way transferred after acceptance to a third party other than the acceptor and the payee of such bill or bills, the exemption shall not hold in respect to any such negotiated bill or bills unless there be affixed to each bill a copy of the same executed on the prescribed stamp for such bill.

See (*h*) p. 444. Bills of exchange drawn (*h*), and promissory notes and the like issued by government officers authorized to draw bills upon the government treasuries, or to issue promissory notes or other acknowledgments on account of government.

See (*i*) p. 444. All drafts or orders for the payment of any sum of money on demand drawn upon any bank, banker, or agent (*i*) residing within 20 miles of the place where such draft or order shall be issued, such place being specified on the face of the draft.

See (*Dj*) p. 444. Bills of sale (*Dj*) - - - - - - - - - - - { *See* Conveyance and Mortgage.

6. Bonds and tumusooks for the payment of money, whether attested or not:

All attested obligations for the payment of money—

												Rs.	a.
If for any sum not exceeding								25	rupees			–	2
Above 25	rupees	and not exceeding						50	„			–	4
50	„	-	-	ditto	-			100	„	-	-	–	8
100	„	-	-	ditto	-			200	„	-	-	1	–
200	„	-	-	ditto	-			300	„	-	-	2	–
300	„	-	-	ditto	-			500	„	-	-	4	–
500	„	-	-	ditto	-			1,000	„	-	-	6	–
1,000	„	-	-	ditto	-			2,000	„	-	-	10	–
2,000	„	-	-	ditto	-			3,000	„	-	-	16	–
3,000	„	-	-	ditto	-			5,000	„	-	-	20	–
5,000	„	-	-	ditto	-			10,000	„	-	-	32	–
10,000	„	-	-	ditto	-			20,000	„	-	-	40	–
20,000	„	-	-	ditto	-			50,000	„	-	-	64	–
50,000	„	-	-	ditto	-			75,000	„	-	-	70	–
75,000	„	-	-	ditto	-			100,000	„	-	-	80	–
100,000	„	-	-	ditto	-			150,000	„	-	-	100	–
150,000	„	-	-	ditto	-			200,000	„	-	-	120	–
200,000	„	-	-	-	-	-	-	-	-	-	-	150	–

And for every sum of one lack in excess of the said amount of two lacks of rupees - - - - - - - - 100 rs. in addition.

7. Bonds concerning respondentia and bottomry - - - { The same stamp as for a bond for the payment of the amount insured.

8. Bonds given as security for the transfer of government securities (*k*), or for the payment of an annuity for a fixed period, or for the delivery or accounting for any matter or thing capable of being valued - - - - - - - - - - - - *See* (*k*) p. 444. { The same stamp as for a bond for the payment of the amount engaged to be paid or accounted for, or of the value of the thing to be delivered or transferred.

9. Bonds for annuities for an indefinite period, such as life annuities { The same stamp as for a bond for the payment of a sum equal to ten times the yearly payment.

10. Bonds when the amount of the money to be secured, or ultimately recovered, shall be uncertain and unlimited - - - { An optional stamp. *See* section 4 of the Act.

When the amount is limited to a certain sum - - - { The same stamp as for a bond for the payment of such limited sum.

11. Bonds for the due execution of an office, or work, mochulkas, and the like taken by individuals, and all other bonds not otherwise specially provided for (*El*) - - - - - - *See* (*El*) p. 444. { An optional stamp. *See* section 4 of the Act.

	STAMP REQUIRED.	No. 7. On Stamps.
Exemptions.		
Arbitration Bonds:		
(*m*) Bonds given to or by the officers of government on account of any matter or thing of or belonging to the government.		*See* (*m*) p. 444.
12. (*n*) Security bonds, which may be taken by or by order of any court, collector, or other judicial or revenue authority; also razeenamahs soolahnamahs and ruffanamahs filed in any suit pending in a court of justice - - - - - - - -	*See* Schedule (B.)	*See* (*n*) p. 444.
13. Charter-parties, or any agreement, or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing between the captain, master, or owner of any ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods, or effects on board of such ship or vessel -	If the amount payable under the deed exceeds 1,000 rupees, 8 rupees. If the amount does not exceed 1,000 rupees, according to the scale prescribed for bonds for the payment of money.	
(*o*) Charter-parties of ships or vessels taken up by government for the conveyance of troops or military stores, or for other political purposes.		*See* (*o*) p. 444.
14. (*p*) Composition deeds, or other instruments of composition between a debtor or debtors, and his, her, or their creditors -	*Rs. a.* 8 –	*See* (*p*) p. 444.
15. Contracts and deeds, if not otherwise specially provided for - - - - - - - - - - - -	As agreements.	
16. Conveyances (kubalas bynamas) or deeds or instruments of any kind or description whatsoever executed for the sale or transfer for a consideration of any lands, tenements, rents, annuities, or other property, real or personal, heritable (*p*) or moveable, or of any right, title, or claim, to or upon, or interest in any lands, houses, rents, annuities, or other property; that is to say, for or in respect of the principal or only deed, instrument, or writing, whereby the property sold shall be conveyed to or otherwise vested in the purchaser or purchasers, or to some other person, by his, her, or their directions:		*See* (*p*) p. 444.
When the purchase or consideration money therein expressed or denoted shall not exceed 50 rupees - - -	– 8	*See* (*q*) p. 444.
Above 50 rupees and not exceeding 100 „ - - -	1 –	
100 „ - - ditto - 200 „ - - -	2 –	
200 „ - - ditto - 500 „ - - -	4 –	
500 „ - - ditto - 1,000 „ - - -	8 –	
1,000 „ - - ditto - 2,000 „ - - -	12 –	
2,000 „ - - ditto - 3,000 „ - - -	16 –	
3,000 „ - - ditto - 5,000 „ - - -	20 –	
5,000 „ - - ditto - 8,000 „ - - -	32 –	
8,000 „ - - ditto - 12,000 „ - - -	40 –	
12,000 „ - - ditto - 20,000 „ - - -	50 –	
20,000 „ - - ditto - 30,000 „ - - -	64 –	
30,000 „ - - ditto - 50,000 „ - - -	80 –	
50,000 „ - - ditto - 100,000 „ - - -	100 –	
100,000 „ - - ditto - 200,000 „ - - -	150 –	
And for every further lack of rupees beyond two lacks - -	100 rs. in addition.	

Note.—When of several deeds, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed. In all cases, however, where there are more deeds than one, every other deed than the principal requires the same stamp as the principal deed, if of value not exceeding eight rupees (which shall be the maximum stamp for collateral deeds), and all such collateral deeds shall specify by their contents which other is the principal deed by which the conveyance has been effected, certifying that it is executed on the proper stamp.

(*continued*)

No. 7.
On Stamps.

	STAMP REQUIRED.
Exemptions.	
See (*r*) p. 444. (*r*) All grants, leases, deeds of sale, or the like wherein Government is a party. *Note.*—This exemption shall not extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of court, in which cases the purchasers shall be required to pay along with the purchase-money the price of the requisite stamp, and shall receive from the officer conducting the sale, a deed of sale (bye namee) executed on the proper stamp. All transfers of subscriptions to any of the government loans or other government securities; also of bank shares.	
17. Copartnership:	
See (*s*) p. 444. Deeds (*s*) of - - - - - - - - - - - - -	*Rs.* 8 *a.* –
See (*t*) p. 444. 18. (*t*) Copies, copy or counterpart of any deed or instrument attested to be a true copy, and furnished to a party to the same, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby -	The same stamp as required for the original deed by this schedule.
19. Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the agreement, contract, bond, deed, or other instrument, per sheet - - - - - - - - -	– 8
20. Copy or extract of any deed, instrument, schedule, receipt or other matter annexed to any agreement, contract, bond, deed, or other instrument, per sheet - - - - - - - -	– 8
21. Authenticated copies of any records, letters, accounts, statements, reports, or other writings, furnished to individuals from *See* (*u*) p. 445. any (*u*) of the public offices of government, per sheet - -	– 8
For copies of revenue and judicial papers to be given from the courts of justice, revenue, kucherries, &c. - - - -	*See* Schedule (B.)
See (*v*) p. 445. *Exemptions* (*v*). Copies made for the private use only of any person having the custody of the original instruments, or of his or her attorney or solicitor, and copies of deeds, &c. retained in public offices, on returning the originals. Copies of papers which public officers are directed by any general regulation to make, require, or furnish, for which stamps are not specially required by this schedule.	
22. Deeds of any kind, not otherwise particularised in this schedule - - - - - - - - - - - -	As agreements.
See (*w*) p. 445. Deeds of gift and dower (*w*) - - - - - - -	*See* Settlements.
See (*x*) p. 445. 23. (*x*) Engagements to cultivate, provide, or deliver indigo plant, or to produce, manufacture, provide, or deliver any other article of commerce, in consideration of money paid or to be paid -	*See* Agreements.
24. Exchanges:	
See (*y*) (*z*) & (*aa*) p. 445. Any deed (*y*) whereby any real (*z*) property (*aa*) shall be conveyed or surrendered in exchange for other property. If no sum of money shall be paid or agreed to be paid for equality of exchange - - - - - - - - -	8 –
If any sum of money be paid or agreed to be paid for equality of exchange - - - - - - - - - -	A stamp of value exceeding by eight rupees the stamp required for a conveyance in a case where the consideration is equal to the sum paid or agreed to be paid for equality of exchange.
25. Leases:	
Any lease made in perpetuity, or for a term of years, or period determinable with one or more lives, or otherwise contingent in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent - - - - - - -	The same stamp as for a conveyance or sale for a sum of the amount of such consideration.

	STAMP REQUIRED.		No. 7. On Stamps.
	For a period not exceeding one Year.	For a period exceeding one Year.	
26. Any lease of lands, houses, or other real property, at a monthly or yearly (*bb*) rent, without any payment of any sum of money by way of fine or premium:			*See* (*bb*) p. 445.
	Rs. *a.*	*Rs.* *a.*	
Where the rent, calculated for a whole year, shall exceed 12 rupees, but not exceed 24 rupees - - - -	– 4	– 8	
Exceeding 24 rupees but not exceeding 50 rupees - -	– 8	– 12	
50 „ - - ditto - 100 „ - - -	– 12	1 –	
100 „ - - ditto - 250 „ - - -	1 –	2 –	
250 „ - - ditto - 500 „ - - -	2 –	4 –	
500 „ - - ditto - 1,000 „ - - -	4 –	8 –	
1,000 „ - - ditto - 2,000 „ - - -	8 –	12 –	
2,000 „ - - ditto - 4,000 „ - - -	12 –	16 –	
4,000 „ - - ditto - 6,000 „ - - -	16 –	20 –	
6,000 „ - - ditto - 10,000 „ - - -	20 –	32 –	
10,000 „ - - ditto - 50,000 „ - - -	32 –	64 –	
Above 500,000 „ - - - - - - - -	64 –	80 –	
27. Any lease of lands, houses, or other real property, at a monthly or yearly (*cc*) rent for an indefinite term, and without any payment of any sum of money by way of fine or premium	The same stamp as for a lease at a monthly or yearly (*cc*) rent, for a period exceeding one year.		*See* (*cc*) p. 445.
28. Any lease of lands, houses, or other real property, stipulating for a monthly or yearly (*cc*) rent, and granted on consideration of a fine or premium - - - - - - - - -	A stamp of value equal to the joint values of the stamps for a conveyance in consideration of the fine, and a lease for the rent.		*See* (*cc*) p. 445.
29. The counterpart of any lease, *i. e.* kubooleut, or the like - -	The same stamp for the lease.		
Exemptions.			
(*dd*) All leases where the rent calculated for a whole year shall not exceed 12 rupees.			*See* (*dd*) p. 445
All leases or pottahs given by authority of Government, or of the Board of Revenue, with their counterparts, and all security bonds executed as part of the same transactions, also (*ee*) all leases, viz. pottahs and kubooleuts executed and exchanged with ryots and other actual cultivators of the soil, and all security bonds executed as part of the same transactions.			*See* (*ee*) p. 445.
Note.—(*ff*) Leases, pottahs, kubooleuts, or other instruments of contract between zemindars, talookdars, or other holders or proprietors of land, whether subject to the payment of revenue to Government or otherwise, or between farmers, kut kenadars, ijaradars or other tenants on one hand, and any other talookdar, kut kenadars, ijaradar, or other leaseholder, intermediate between the ryots or actual cultivators, and the sudder mulgoozar or lakerajdar on the other. - - - - - - - - - - - -	A stamp of the value above prescribed for lease.		*See* (*ff*) p. 445.
30. Letters or powers of attorney, or commission, or factory, in the nature thereof, of mockktarnamahs, &c. viz.:			
	Rs. *a.*		
For the performance of any special act or acts, or of the acts connected with any one particular case, suit or transaction -	– 8		
General; that is, not restricted as above - - - - -	4 –		
31. (*gg*) Wakalutnamahs, mooktarnamahs, and other powers required to be filed for the conduct of suits, regular or summary, or of proceedings of any kind pending before the courts of judicature, or before the revenue authorities - - - -	*See* Schedule (B.)		*See* (*gg*) p. 445
32. Letters of license:			
From creditors to debtors - - - - - - - -	8 –		

No. 7. On Stamps.		STAMP REQUIRED.
See (*hh*) p. 445.	33. (*hh*) Mortgages: Any deed of mortgage or conditional sale, kutkubalah, bye-bil-vafa, bhog-bunduk or the like, with or without possession given, of or for any lands, estates, or property, real or personal, intended as a security for money due or to be lent thereon. Also any deed or contract accompanied with a deposit of title deeds to any property, where the same may be made as a security for payment of money due or lent at the time - - - - - - - - - - - -	The same stamp as for a bond for the payment of the amount due or lent.
	34. Deeds of mortgage or the like given as security for the transfer of government securities, or for the payment of an annuity for a fixed period, or for the delivery at a future time, of any matter or thing capable of being valued - - - -	The same stamp as for a bond for the payment of the total amount assured, or for the *bonâ fide* value.
	35. Deeds of mortgage given for the security of annuities for an indefinite period, such as life annuities - - - - -	The same stamp as for ten times the annual payment.
	Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum - - -	The same stamp as for a deed or mortgage for such limited sum.
	Where the total amount secured by the mortgage is unlimited	An optional stamp. *See* section 4 of the Act.
	Where a bond may have been already taken for the amount secured, or where, from any other cause, the mortgage shall act merely as a collateral security to some other transaction in which an instrument requiring a stamp has been executed	The same stamp as for bond or other instrument, if of value not exceeding eight rupees; otherwise a stamp of eight rupees.
	Where there are more deeds than one required to execute the mortgage in the manner desired by the parties, then for every other deed than the principal deed - - -	The same stamp as for the principal deed, if of value not exceeding eight rupees; in other cases a stamp of eight rupees.
See (*ii*) p. 446.	36. Mortgages, assignments, or acknowledgments, granted to the treasurer or other officer of the Bank of Bengal, on account of that bank, or to any private banker or agent, for loans or advances made on the deposit of government securities, bullion, plate, jewels, or other goods - - - - - - - -	The same stamp as for promissory notes (*ii*).
	37. Partitions by private agreement of heirs and co-sharers, or made by public officers, of estates or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos:	
	When a sharer's portion exceeds in value 800 rupees, then on every such sharer's copy of the deed of partition - -	*Rs.* 8 *a.* –
	When the sharer's portion does not exceed 800 rupees—	
	Then if not exceeding 100 rupees - - - - -	– 8
	Exceeding 100 rupees and not exceeding 200 rupees - -	1 –
	200 „ - ditto - - - 400 „ - -	2 –
	400 „ - ditto - - - 600 „ - -	4 –
	600 „ - ditto - - - 800 „ - -	6 –
See (*Fjj*) p. 446.	When the subject of partition (*Fjj*), consisting either wholly or in part of other property than money, any money, not being part of such subject, is paid or agreed to be paid, for the purpose of compensating any difference from just proportion in the partition actually made of that subject - -	A stamp of value equal to the joint values of the stamp which would have been required had the subject of partition been actually divided in the just proportion, and of a stamp for a conveyance or sale, for a sum equal the amount so paid or agreed to be paid, for the purpose of compensating the difference therefrom.

	STAMP REQUIRED.	No. 7. On Stamps.
	Rs. *a.*	
38. Policy of assurance or insurance, or other instrument by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives:		
Where the sum insured shall not exceed 5,000 rupees - -	4 –	
Exceeding 5,000 rupees, and not exceeding 10,000 rupees -	8 –	
10,000 „ - - ditto - - - 20,000 „ -	12 –	
20,000 „ - - ditto - - - 50,000 „ -	16 –	
Above 50,000 „ - - - - - - - - -	20 –	
39. Policy of insurance of any ship, vessel, sloop, lighter, boat or the like, or of any goods or property on board, or upon the freight of any ship, vessel, sloop, lighter, boat or the like, or upon any other interest relating thereto; or upon any voyage where the premium shall not exceed two per cent. on the sum insured:		
If the whole sum insured shall not exceed 1,000 rupees -	– 8	
If the sum insured exceed 1,000 rupees, then for every 1,000 rupees, and also for any fractional part of 1,000 rupees, whereof the same shall consist - - - - - -	– 8	
Where the premium shall exceed two per cent. on the sum insured, if the whole sum shall not exceed 1,000 rupees -	1 –	
If the sum insured exceeds 1,000 rupees, then for every 1,000 rupees, and also for any fractional part of 1,000 rupees whereof the same shall consist - - - - - -	1 –	
Promissory notes (*kk*) - - - - - - - - - -	*See* Bills of Exchange.	*See* (*kk*) p. 446.
40. Promissory notes for the payment of any sum by instalments, *i. e.*, kistlumdees, or for the payment of several sums at different dates, so that the whole of the money to be paid shall be definite and certain - - - - - - - - -	The same stamp as for a bond for the payment of the whole amount.	
41. (*G ll*) Receipts for money deposited in any bank, or in the hands of any banker or agent, if the same shall stipulate for the payment of interest:		*See* (*Gll*) p. 446.
When the receipt contains nothing whereby it appears that money deposited is not liable to be withdrawn within three months from the date of the deposit—		
If for a sum of money not exceeding 25 rupees -	– 1	
Above 25 rupees, and not exceeding 50 „ -	– 2	
50 „ - - ditto - 100 „ -	– 4	
100 „ - - ditto - 200 „ -	– 8	
200 „ - - ditto - 400 „ -	– 12	
400 „ - - ditto - 800 „ -	1 –	
800 „ - - ditto - 1,600 „ -	1 8	
1,600 „ - - ditto - 3,000 „ -	2 –	
3,000 „ - - ditto - 5,000 „ -	2 8	
5,000 „ - - ditto - 10,000 „ -	4 –	
10,000 „ - - ditto - 20,000 „ -	6 –	
20,000 „ - - ditto - 30,000 „ -	8 –	
30,000 „ - - ditto - 50,000 „ -	12 –	
50,000 „ - - ditto - 100,000 „ -	16 –	
100,000 „ - - ditto - - - - -	20 –	

No. 7. On Stamps.

	STAMP REQUIRED. Rs.	a.
When it shall appear from the terms of the receipt that the money is not liable to be withdrawn within three months—		
If for a sum of money not exceeding 25 rupees -	–	2
Above 25 rupees, and not exceeding 50 „ -	–	4
50 „ - - ditto - - 100 „ -	–	8
100 „ - - ditto - - 200 „ -	–	12
200 „ - - ditto - - 400 „ -	1	–
400 „ - - ditto - - 800 „ -	1	8
800 „ - - ditto - - 1,600 „ -	2	–
1,600 „ - - ditto - - 3,000 „ -	2	8
3,000 „ - - ditto - - 5,000 „ -	4	–
5,000 „ - - ditto - - 10,000 „ -	6	–
10,000 „ - - ditto - - 20,000 „ -	8	–
20,000 „ - - ditto - - 30,000 „ -	12	–
30,000 „ - - ditto - - 50,000 „ -	16	–
50,000 „ - - ditto - 100,000 „ -	20	–
100,000 „ - - - - - - „ -	25	–
When it shall appear from the terms of the receipt that the money is not liable to be withdrawn within one year—		
If for a sum of money not exceeding 25 rupees	–	2
Above 25 rupees, and not exceeding 50 „ -	–	4
50 „ - - ditto - - 100 „ -	–	8
100 „ - - ditto - - 200 „ -	1	–
200 „ - - ditto - - 300 „ -	2	–
300 „ - - ditto - - 500 „ -	4	–
500 „ - - ditto - - 1,000 „ -	6	–
1,000 „ - - ditto - - 2,000 „ -	10	–
2,000 „ - - ditto - - 3,000 „ -	16	–
3,000 „ - - ditto - - 5,000 „ -	20	–
5,000 „ - - ditto - - 10,000 „ -	32	–
10,000 „ - - ditto - - 20,000 „ -	40	–
20,000 „ - - ditto - - 50,000 „ -	64	–
50,000 „ - - ditto - - 75,000 „ -	70	–
75,000 „ - - ditto - - 100,000 „ -	80	–
100,000 „ - - ditto - - 150,000 „ -	100	–
150,000 „ - - ditto - - 200,000 „ -	120	–
200,000 „ - - - - - - „ -	150	–
And for every sum of one lack in excess of the said amount of two lacks of rupees - - - - - - -	100 rs. in addition.	
42. Receipts or discharges given for any, or upon the payment of any sum of money:		
Exceeding 50 rupees, not exceeding - 100 rupees -	–	2
100 „ - - ditto - - 200 „ -	–	4
200 „ - - ditto - - 500 „ -	–	8
500 „ - - ditto - - 1,000 „ -	–	12
1,000 „ - - ditto - - 2,000 „ -	1	–
2,000 „ - - ditto - - 3,000 „ -	1	8
3,000 „ - - ditto - - 5,000 „ -	2	–
5,000 „ - - ditto - - 8,000 „ -	2	8
Above 8,000 „ - - - - - - „ -	4	–
Also for receipt in full all demands - - „ -	4	–

And any instrument, note, memorandum, or writing, given on the payment of money, whereby any money, debt, or demand, or the part thereof therein specified, shall be expressed or acknowledged to have been paid, settled, or otherwise satisfied, shall be deemed to be a receipt for the amount so declared to be paid or satisfied.

And if any such instrument or other writing shall contain a general acknowledgment of the settlement of debts, accounts, or other demands, without specifying the amount thereof, such instrument or writing shall be deemed to be a receipt in full of all demands.

	STAMP REQUIRED.	No. 7. On Stamps.
And if payment be made by delivery of a bill or bills of exchange, draft or drafts, promissory note or notes or the like securities of money, the receipt or acknowledgment given thereupon is a receipt within the meaning of the schedule.		
Exemptions.		
(*mm*) Receipts for money paid or received by any officer of Government on account of Government.		*See* (*mm*) p. 446.
Receipts or discharges for the rent of land granted by any zenamdar, talookdar, farmer, or other malgoozar, or by any holder or proprietor of land held exempt from the payment of revenue, or by any mofussil talookdar, ijaradar, kutkenadar, or other leaseholder, or by the gomastah, factor, or other agent of such zenamdar or other person aforesaid, to a ryot or other actual cultivator, for the rent of land tilled by him.		
Note.—(*nn*) Receipts or discharges granted by any zenamdar, talookdar, or other holder or proprietor of land, or by any farmer, kutkenadar, ijaradar, or other tenant to any talookdar, kutkenadar, ijaradar, or other leaseholder, intermediate between the ryots or actual cultivators and the sudder malgoozar or lakerajdar, shall require stamps.		*See* (*nn*) p. 446.
Receipts and discharges given for the purchase-money of any government securities or shares of the Bank of Bengal.		
(*oo*) Receipts and discharges given for money deposited in any bank, or with any agent, to be accounted for on demand, provided no interest be stipulated as payable thereon.		*See* (*oo*) p. 446.
Receipts and discharges written on promissory notes, bills of exchange, drafts or orders for the payment of money.		
Receipts and discharges given to gomashtahs and others, being servants of the party giving the receipts in acknowledgment of the performance of service, or of the said servants having rendered account of trusts and monies committed to them.		
Letters by the post, acknowledging the arrival of any promissory notes, bills of exchange, or other securities for money.		
Receipts or discharges written upon or contained in any bond, deed of mortgage, or other security, or any deed of conveyance, settlement, or other deed or instrument whatever, acknowledging the receipt of the consideration money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured.		
43. Settlements, marriage settlements, &c. viz.:		
Any deed or instrument whereby any sum or sums of money, or any government securities (*pp*), or other property, real or personal, shall be settled or agreed to be settled upon or for the benefit of any person or persons in any manner whatsoever - - - - - - - - - - -	The same stamp as for a bond for the payment of the amount or value settled, or agreed to be settled; or in cases in which the value shall be indeterminate, an optional stamp. *See* section 4 of the Act (*qq*).	*See* (*pp*) p. 446. *See* (*qq*) p. 446.
(*rr*) Deed of gifts and dower, whether to take effect on the instant or at a future period, determinate or indeterminate -	The same stamp as for deeds of settlement.	*See* (*rr*) p. 446.
Wills, testaments, and the like, together with deeds merely declaratory of trust pursuant to any previous settlement, deed, or will.		
General Exemption and Rule.		
Deeds, instruments, and writings of any kind, in which Government, or any Board, commission, court, or public officer of Government (*ss*), may, in a public capacity, be a party, do not require stamps.		*See* (*ss*) p. 446.
Note.—The foregoing exemption does not extend to deeds, instruments, and writings executed to or by the court of wards, local agents, or officers acting under their authority (*tt*).		*See* (*tt*) p. 446.

No. 7. On Stamps.

	STAMP REQUIRED.
See (*uu*) p. 446. *General Rule* (*uu*). If any instrument or writing specified in this schedule (excepting copies and extracts provided for in Nos. 19, 20, and 21) shall be on more than one sheet, or piece of paper, or other material, it shall suffice that one sheet shall be stamp, provided that it be of the requisite value, and that the signatures or seals of the parties or witnesses be thereupon.	

Indian Law Commission, 22 April 1836. (signed) *F. Millett*, Secretary.

Sep. India Cons. 20 Oct. 1837. No. 19. Enclosure.

SCHEDULE (B.)

Specifying LAW or other OFFICIAL PAPERS which require STAMPS, and indicating the proper Stamps for those Law or other Papers.

	PROPER STAMP.	
1. Bail-bonds, mockulkas, recognizances, security bonds (hazir or fial zarnen), whether of specified amount or with a penalty of a specific sum of money, or of indefinite amount, when furnished and filed under special order of a court of justice, civil or criminal, or of any officer exercising judicial powers - - -	The same stamp as for petitions presented to the court or authority by which the bail-bond, or other instrument shall have been ordered.	
(*H*). *Exemption.* Mockhulkas taken on the release of prisoners from the foujaree or criminal gaol; also mockhulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials.		
2. Copies of decrees in all regular suits when passed in the courts of the registrars or zillah (*a*) and city judges, or by principal sudder ameens or sudder ameens - - - - - -	*Rs.* 1	*a.* –
See (*a*) p. 460. *See* (*b*) p. 460. In the provincial courts of appeal (*b*) - - - - -	2	–
In the Court of Sudder Dewannee Adawlut - - - -	4	–
3. Copies of revenue and judicial proceedings, of accounts, statements, reports, or the like, filed on record, and taken out for use or reference, or when left on proceedings in place of originals withdrawn, per sheet - - - - - - - -	–	8
(*I*). And each sheet shall be written on one side thereof only.		
4. Copies of the proceedings of the Courts of Sudder Dewannee Adawlut prepared for transmission to England in appeals to the King in Council, per sheet - - - - - -	2	–
5. Exhibits:		
When filed or entered on the proceedings of any regular suit, shall be accompanied by a petition, dorkhaust, or application, written on a stamp of value, according to the number of exhibits, at a rate for each exhibit of - - - -	–	8
In the courts of the sudder aumeens - - - - -	—	
In the courts of the zillah and city judges and principal sudder aumeens - - - - - - - - -	1	–
In the courts of the Sudder Dewannee Adawlut, or before commissioners of revenue and circuit - - - -	2	–
6. Mooktanamahs, wakalutnamahs, and other powers required to be filed for the conduct of suits, regular or summary, or of proceedings of any kind pending before courts of judicature or before revenue authorities - - - - - - - - -	The same stamps as for petitions presented to those courts or authorities.	

	PROPER STAMP.	No. 7. On Stamps.
Exemption.		
Mooktanamahs executed by native officers and soldiers belonging to the regular corps on the military establishment of the Presidency of Fort William.		
7. Petitions, dorkhaust, or applications addressed to any of the undermentioned authorities in relation to matters pending before them in their official capacities, when not otherwise specified or provided for in this schedule:		
If to a principal sudder aumeen or sudder aumeen, or to a collector of land revenue or of customs, or to an officer of the salt or opium department exercising judicial powers, or to a magistrate, joint magistrate, or to a zillah or city adawlut, or to a session judge, per sheet - - - - - -	*Rs.* *a.* – 8	
If to a commissioner of revenue and circuit, or any Company's officer exercising judicial powers superior to the zillah adawlut, per sheet - - - - - - - - - - - -	1 –	
If to a court of Sudder Dewannee or Nizamut Adawlut, or to a Sudder Board of Revenue, or to a Board of Customs, Salt and Opium, per sheet - - - - - - - -	2 –	
Exemptions.		
All charges and informations respecting crimes and offences not bailable under the Regulations.		
Petitions from prisoners, convicts, persons under examination, or otherwise in duress, or under restraint of the court or its officers (*c*).		*See* (*c*) p. 460.
Petitions of appeals presented to magistrates against chowkeedarry assessment.		
Communications made to magistrates in regard to police matters not intended for record.		
Petitions to collectors or officers making settlements relating to matters connected with the assessment of lands, the ascertainment of rights, or to other matters affecting the settlement of government revenue on lands, if presented pending the formation of such settlements.		
Petitions to Boards or commissioners of revenue relating to the same.		
8. (*d*) Summary claims connected with arrears or exactions of rent preferred to a collector of land revenue - - - - - -	A stamp of one-fourth the value of the stamp required by No. 9, for a petition of plaint in a regular suit for the recovery of a like sum on any account.	*See* (*d*) p 460.
Provided, however, that the collector shall have a discretion to receive a complaint written on a stamp of eight annas from any dependant, telakdor, farmer or ryot, if the complainant is *bonâ fide* unable to pay the price of the required stamp, or if the collector should for other reasons consider the indulgence proper.		
9. (*e*) Plaints petition of, in regular suits and appeals instituted in any civil court of the East India Company for the recovery of any sum of money, or to obtain possession of any interest, matter or thing, except in the cases specially provided for in No. 10:		*See* (*e*) p. 460
If the amount or value of the property claimed shall not exceed - - - - - 16 rupees - - - -	1 –	
Above 16 rupees, not exceeding 32 „ - - -	2 –	
32 - ditto - 64 „ - - -	4 –	
64 - ditto - 150 „ - - -	8 –	
150 - ditto - 300 „ - - -	16 –	
300 - ditto - 800 „ - - -	32 –	
800 - ditto - 1,600 „ - - -	50 –	
1,600 - ditto - 3,000 „ - - -	100 –	
3,000 - ditto - 5,000 „ - - -	150 –	
5,000 - ditto - 10,000 „ - - -	250 –	
10,000 - ditto - 15,000 „ - - -	350 –	
15,000 - ditto - 25,000 „ - - -	500 –	
25,000 - ditto - 50,000 „ - - -	700 –	
50,000 - ditto - 100,000 „ - - -	1,000 –	
100,000 - - - - - - - - - -	2,000 –	

(*continued*)

No. 7.
On Stamps.

PROPER STAMP.

Note.—In suits for lands paying revenue to Government, if forming one entire muhal, or a specific portion thereof, with a defined jumma, the value shall be assumed in the Ceded and Conquered Provinces, including Cuttack, at the amount of the annual jumma payable to Government on account of the muhalur portion thereof, as aforesaid; and where the land has been assessed in perpetuity, at three times the amount of the annual jumma.

In suits for lakheraj lands, *i. e.* lands not paying revenue to Government, the value shall be assumed at 18 times the amount of annual rent, by computation.

In suits for damages, compensation for injury, loss of caste, and the like, the amount shall he commuted at the rate assumed by the plaintiff.

In suits for houses, gardens, and other things of value, real or personal, not of the descriptions before specified, as well as for any interest in malgoozaree land, not capable of valuation under the above rule, the amount shall be computed according to the estimated selling price, and every plaint shall specify the value of the thing claimed; and if the value thereof be understated in the proportion of 10 per cent., and the plaintiff have not, before completion of the pleadings, filed a second or duplicate plaint on a stamp of value equal to the difference, under the rule contained in clause 1, section 7, Regulation XXVI. 1814, the defendant shall be entitled, on adducing proof of the same, to obtain a nonsuit, to which effect the courts are hereby required to pass judgment in such cases, anything in the existing Regulation to the contrary notwithstanding.

See (*f*) p 460.

10 (*f*). Petition of plaint in original regular suits regarding arrears or exactions of rent instituted in any civil court of the East India Company, if under the Regulations such complaint would have been cognizable as a summary suit - - - - - - - A stamp of one fourth the value of the stamp required for a petition of plaint in regular suits for the recovery of a like sum upon any other account.

Note.—The foregoing rule is not applicable to a suit instituted with a view to set aside a previous summary decision.

11. Pleadings, judicial: Every answer, replication, rejoinder and supplementary pleading filed in any regular suit—

	R.	*a.*
In the courts of the sudder ameens - - - - - -	–	8
In the courts of the principal sudder ameens - - - -	1	–
In the zillah and city courts— - - - - - - -		
In original suits and appeals for property not exceeding 1,000 rupees in value or amount - - - - - -	1	–
In original suits and appeals for property exceeding 1,000 rupees in value or amount - - - - - -	4	–
In the courts of Sudder Dewannee Adawlut - - - -	4	–

Note.—The pleadings in the Sudder and Mofussil special commissions, and other extraordinary courts, shall be regulated by the rules of practice established, or that may be established by those courts respectively.

12. Ruzemanahs, rufunamahs, soolutnamahs, or the like, that is to say,

Any written application whereby or according whereunto a regular suit pending in a civil court shall be adjusted or be capable of adjustment without argument in court, and award of the presiding judge or other officer - - - The same stamp as for pleading in the court wherein the application may be filed.

See (*g*) p. 460.

(*g*) If the suit be dismissed on such application before the pleadings have been completed and the case called up, the plaintiff shall be entitled to claim from the court a certificate, stating the value of the stamp on which the plaint is written, with specification of the number and endorsement of the paper filed, on presenting which to the collector of the district, the plaintiff shall be entitled to receive back the entire value of the said stamp; provided always there be no exception taken to the stamp.

	PROPER STAMPS.
If the pleadings have been completed, and the case has been called up for decision, or is in the list of causes ready for hearing, the plaintiff shall receive a certificate as above, for half of the value of the stamp on which the plaint is written. If the adjustment by razemanah or soolutmanah be such as to require decree to pass, on which process of execution can be taken out, the plaintiff shall not be entitled to any refund of the value of the stamp.	
13. Witnesses' petitions or applications for the summoning or examination of witnesses, in regular suits, according to the number of persons named - - - - - - - - - -	The same stamps as for exhibits.
And no witness shall be summoned or examined in a regular suit unless his name is included in a petition or application in writing, given in as above.	
Rule.	
Nothing herein contained shall be held to alter or affect the rules in force in regard to paupers.	

No. 7.
On Stamps.

Indian Law Commission, 22 April 1836. (signed) *F. Millett*, Secretary.

(No. 768.)

From the Acting Secretary, Board of Customs, Salt and Opium, to *F. Millett*, Esq. Secretary to the Indian Law Commission; dated 27 July 1836.

Sep. India Cons. 20 Oct. 1837. No. 20. Enclosure.

Sir,

I HAVE the honour, by direction of the Board of Customs, Salt and Opium, to acknowledge the receipt of your letter, dated 22d April last, desiring their opinion on the drafts of a Stamp Act and Schedules therewith enclosed, with such suggestions as might occur to them on certain points more specially adverted to in your communication, and on the drafts generally.

2. The Board instruct me to express their extreme regret, and offer their sincere apologies to the Commissioners for the delay which has occurred in replying to your letter under acknowledgment. But the business which devolves upon this Board, in eight separate departments, is so incessant, and generally, from the nature of the duties, so pressing, as to be peculiarly opposed to that quiet and uninterrupted consideration absolutely necessary to a tolerable understanding of the many intricate questions which suggest themselves on examining a stamp law. It has, therefore, only been possible to devote short periods, and at intervals far apart, to a perusal and consideration of the drafts forwarded with your letter. Even at those periods the attention of the Board was frequently demanded for business most foreign to the matter in hand, and of a nature which would admit of no postponement; consequently they fear that such observations and suggestions as they have thought it advisable to offer, will be found, notwithstanding the delay which has occurred in submitting them, to bear those marks of crudeness and haste inseparable from the disadvantageous circumstances under which they were prepared,—circumstances, indeed, which have been more than ordinarily unpropitious to any affairs requiring reflection or study; since to the usual routine of pressing business, in which an affair so largely connected with commerce and navigation must be always involved, has been superadded all the labour and perplexity imposed by the recent sweeping change in our customs' system. The adoption of a new tariff, and introduction of a new customs' law, besides in important in the mode of managing the salt monopoly, involving many intricate details and requiring constant attention.

Original defective.

No. 7. On Stamps.

3. These explanations may appear irrelative to the matter under consideration, but the Board trust that the Commissioners will be pleased to receive them in excuse for an unavoidable delay, and for the imperfect assistance now offered in the framing of the Stamp Act, since the whole of the heavy and engrossing changes above alluded to have been introduced since the date of your letter, and have not even yet settled into anything like order.

4. I shall now proceed, under the instructions of the Board, to offer certain observations on the points to which their attention is more particularly required by your letter under acknowledgment. Separate papers of observations have been drawn out upon each of the draft schedules, and corresponding letters are attached in the draft schedule to the point remarked upon, and to the observation in the separate papers.

Observation on paragraph 5 of your letter respecting the construction put upon the second exemption to No. 1 in Schedule (A.):—

The Board have never been called upon to put any construction on the meaning or intent of the provision adverted to; neither are they very clear as to the object of it. They were not vested with the control of the Stamp Department when the regulations were framed, and were, of course, not consulted in framing them. They believe the rule is analogous to one in operation under the British stamp law, and they presume the object to have been not to burthen parties with the stamp tax as well as with postage. But they perceive no reason why the limitation, either as to the parties to the agreement being merchants or otherwise, or as to distance, should be retained; and they recommend that the exemption, if it stands at all, should stand thus:—

"Agreements made by letter through the public dawk."

On paragraph 6. (B.) No. 2.

5. The Board consider it desirable to retain the number: it provides for reconveyances and transfers of mortgages, of bonds, policies of insurances, &c. which are not provided for under the head of conveyance. But the duty might be regulated, as in the last rule, at No. 35, viz. by affixing the same stamp as on the original deed or instrument, if of a value not exceeding eight rupees; in other cases a stamp of eight rupees.

On paragraph 7. (C.)

6. There is nothing on the Board's records to establish the exact signification which has been considered to attach to the terms "Foreign bills;" indeed it is singular how very rarely the meaning or intent of entries in the Mofussil Regulations have been made the subject of reference, while in Calcutta the entries have escaped discussion, because the Regulation has been nearly a dead letter. "Foreign bills," however, has been generally understood to signify bills drawn upon any place not on the continent of India, and bills drawn from any place not on the continent of India. There appears to be no good reason why such bills should only receive the benefit of the exemption when drawn in sets.

7. It occurs to the Board that the exemption "foreign bills of exchange" had better have a separate place after the proviso which immediately follows the first exemption to No. 5 in the Draft Schedule (A.); inasmuch as that whether foreign bills are negotiated or not, after acceptance, they are not liable to any stamp duty.

On paragraph 8. (D.)

8. Government have hitherto, so far from exempting bills of lading, not even exempted duplicates or triplicates of those instruments from stamps, though parties engaged in mercantile transactions applied for an exemption for such duplicates and triplicates, and although it was accorded in the case of duplicates

and

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and triplicates of other instruments. Perhaps the duty might be maintained (without being liable to the objection urged by the Commissioners) upon bills of lading of or for any goods *exported by sea to ports and places other than those of British India.*

On paragraph 9. (E.)

9. Collateral bonds are almost invariably given with mortgages, conveyances, leases, settlements, and sometimes with money bonds. The Board think that the entry had better be retained, but concur in opinion with the Commissioners, that the stamp should be regulated as in the cases of collateral instruments in Nos. 16 and 35.

On paragraph 10. (F.)

10. If the Board rightly apprehend the change here contemplated, the principle of Regulation X. of 1829 is retained; but when any sum of money is paid for equality of partition, one stamp, of the amount necessary to cover both the deed of partition and the payment for equality of partition, is to be used instead of two. This indeed has been sometimes the practice under the existing law; but the amendment of the Commissioners, if correctly apprehended by the Board, provides for it more distinctly. The "principal deed" adverted to by the Commissioners as occasioning difficulty, is not a principal deed in the common signification of the term, that is to say, it is not the chief or most important deed used in the transaction; nor could it be, for, as observed in your communication, each copy of the deed of partition must be a counterpart of every other copy. But the word "principal" is used in Regulation X. of 1829 in contradistinction to the collateral deeds, by which deeds of partition are sometimes accompanied.

11. It seems necessary to provide for these collateral deeds in the new Act. Perhaps the best mode of doing so is to extend to them the principle laid down in the last entry of No. 35, Draft Schedule (A.)

On paragraph 11. (G.)

12. Should the Commissioners consider it desirable to bring receipts of the description contemplated in this paragraph, *really*, and not as now, *nominally*, under the operation of the stamp law, the Board think that the difficulty apprehended may be met by an entry in Schedule (A.), to the following effect:

"Receipts for money deposited in any bank, or in the hands of any banker, or any other person or persons, if *the same shall not show* on the face of the receipt that no interest is payable on * the money deposited."

"When it shall appear from the terms of the receipt that the money is liable to be withdrawn on demand, or within three months."

"If for a sum of money," &c. &c.

"When it shall appear from the terms of the receipt that the money is liable to be withdrawn after three months, but within one year."

"If for a sum," &c. &c.

"When it shall appear from the terms of the receipt that the money is liable to be withdrawn after one year, *or when there shall be nothing on the receipt distinctly to show within what period the money is to be withdrawn.*"

Not provided for in the Draft Schedule, but apparently necessary.

"If for any sum not exceeding," &c. &c.

12. No observations appear to be called for upon paragraphs 12, 13, and 14 of your communication. The Board participate in the sentiments of the Commissioners respecting the imposition of stamp duties on legal proceedings, and they have on more than one occasion submitted their opinion to Government, that the relinquishment of this source of revenue was more imperatively demanded at the hands of the State, than the relinquishment of the transit duties, the salt and opium monopolies, or any other branch of the public resources controlled by this Board.

13. I am

* This, as far as the mere preparation of the receipt was concerned, would only impose upon agents and bankers the necessity of having the words "no interest payable" printed on their receipts.

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13. I am further directed by the Board to submit whether there are not certain provisions of the existing Regulations omitted in the draft of the Act, which it may be desirable to reconsider if the omissions are advisedly made, or to rectify if they have been made undesignedly.

14. The following are the provisions adverted to, and which it may be thought desirable to add on further consideration.

A provision for affixing two or more stamps, to denote the value chargeable on any single piece of paper, &c., *vide* clause 2, section 5, Regulation XII. 1826, and clause 2, section 6, Regulation X. 1829. This is constantly requisite for policies of insurance, upon which the rates vary so materially with reference to the amount insured and the premium, that we have no single stamp of the proper value.

A provision for stamping materials belonging to individuals, *vide* section 7, Regulation XII. 1826, and section 11, Regulation X. 1829. This is absolutely indispensable for Calcutta, where instruments are prepared on parchment, and documents are constantly engrossed prior to being stamped.

A provision to allow discount when parties supply materials, and require stamps to the extent of upwards of 500 rupees (*vide* clause 4, section 7, Regulation XII. 1826, and clause 4, section 11, Regulation X. 1829); also to allow discount to wholesale purchasers in cases when parties purchase stamps to the same extent of more than 500 rupees.

A provision empowering the Government and the Board to remit fines, *vide* clause 4, section 11, Regulation XII. 1826, and section 16, Regulation X. 1829.

A provision imposing penalties on individuals, agents, counsel, attornies, and mooktears, for filing or exhibiting unstamped deeds, &c., in any court or office, *vide* clause 1, section 12, Regulation XII. 1826, and clause 1, section 18, Regulation X. 1829.

A provision giving the power to summon witnesses and administer oaths to officers appointed under section 25 of the draft, *vide* section 15, Regulation XII. 1826, and section 19, Regulation X. 1829. False deposition given before officers appointed under section 25 of the Act to be deemed perjury, and persons convicted of the same to incur the penalties provided for that offence by law.

15. There are many deeds or writings used, or at all events prepared in Calcutta, which do not appear to be separately provided for in the Draft Schedule (A.), but which do not still fall under No. 1 in that draft. The stamp required under that number has reference to the amount value, but the instruments above adverted to relate to matters and acts not susceptible of valuation.

16. By the existing Calcutta Regulation many of these instruments and writings fall under the two following heads, either under the head of agreements, (the first entry in the Calcutta schedule) or under the head "Deeds of any kind not otherwise particularized" in the said schedule. The stamp in each case bears a fixed value of eight rupees.

17. The writings or instruments adverted to are in most instances peculiar to English law, and arising out of its intricate technicalities. The Board cannot even pretend to an acquaintance with the nature or intent or use of many of them. It will readily be perceived, however, that amongst others, neither a notarial act or a warrant of attorney can be classed under any of the entries in the Draft Schedule (A.), while a dissolution of copartnership, a declaration or revocation of use or trust of or concerning estates or property, though both in the nature of deeds, will not fall under the entry deed in the schedule, because the duty on deeds is a rateable one.

* Marked (No. 1.)

18. The Board have caused to be prepared a list* of the writings in question, which has been drawn up with the remarks opposite to each entry, by a very intelligent and valuable native officer, Ramchunder Ghosaul, who is attached to the office of Collector of Calcutta Stamps, and who is probably more familiar with the working of Regulation XII. of 1826, (by far the most difficult portion of the law to amalgamate with a general scheme,) with the means by which its provisions are evaded, and with the practice of attornies and others

in

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On Stamps.

in obtaining or avoiding stamps for the several deeds and instruments constantly employed in their profession, than any other individual attached to the department.

19. This officer had also prepared a schedule less voluminous and elaborate than that drawn up by Mr. Cleland, which has already been before the Commission, but comprising a larger portion of the deeds and instruments in use within the jurisdiction of his Majesty's courts, than the Draft Schedule (A.) The Board instruct me to forward this paper*, both as being creditable to the officer who has prepared it, and as the Commissioners might desire to inspect it prior to finishing the draft of the new Act.

* Marked (No. 2.)

20. It occurs to the Board that a number of the writings and instruments in the list marked (No. 1) might be included in the new Schedule (A.), under an entry to the following effect:—"No. 22. Deeds or instruments not otherwise particularized or provided for in this schedule, nor expressly exempted from all stamp duty, if relating to matters not capable of valuation, eight rupees, or such other sum as may appear fitting."

21. The above entry would not, the Board believe, include all the writings specified in Ramchunder Ghosaul's list; but those which it did not include could of course be classed under separate proper heads, if the Commissioners thought it desirable.

I have the honour to return the original papers which accompanied your communication.

I have, &c.

(signed) *S. G. Palmer*, Acting Secretary.

Sep. India Cons. 20 Oct. 1837. No. 21. Enclosure.

OBSERVATIONS and SUGGESTIONS for the Consideration of the Indian Law Commissioners.

On the Draft of the Act.

(a) REGULATION XII. of 1826 was re-enacted on the 14th June 1827, and registered on the 12th July 1827.

Query, is it necessary to notice this last-mentioned date in the new Act?

(b) Is it to be inferred from this that deeds, &c. required by Regulations XII. of 1826 and X. of 1829, to be upon stamped paper, but which are executed upon unstamped paper, shall be stamped under the provisions, or otherwise brought under the penalties prescribed, and dealt with by those Regulations? In the event of a paper which ought to have been stamped under Regulation XII. of 1826, but which is not stamped, coming into the possession of the collector of Calcutta stamps, is it intended that the department shall prosecute in the Supreme Court for the recovery of the penalties prescribed by that law?

(c) Do the words "Territories subject to the Presidency of Fort William," include Calcutta? It is the wording of Regulation X. of 1829 (preamble), which did not include Calcutta. In Regulation XII. of 1826, the provinces subordinate to this presidency are distinctly separated from the town of Calcutta. Might not the wording run thus: "If one or more of the parties thereto be at the time of executing it within the limits of the territories composing or forming the Presidency of Fort William"?

(d) It is presumed that there is no intention to prescribe the size of the sheet (or stamp) upon which bonds, settlements, mortgages, and the instruments generally which are included in Schedule (A.), are to be engrossed, but merely the size of the stamp, upon which copies of revenue and judicial proceedings, &c. are to be taken, and the same for petitions and records of office.

(e) "Promissory notes." Should not post bills be added? The absence of the term may raise a question in the courts, in the event of one of those instruments, viz., post bills being produced in evidence*.

A section

* *Vide* letter to collector of Calcutta stamps, of 30th July 1832.

(*f*) A section analogous to section five appears necessary to enable government to exempt from duty any deed or instrument, or duplicate thereof. Under the existing Regulations duplicates and triplicates of deeds and instruments liable to *ad valorem* duties (not those liable to fixed duties) have been exempted from duty*.

(*g*) For the convenience of parties purchasing stamps, venders are sometimes in the habit of writing their names on the face of the stamp high up towards the margin of the paper. This enables the purchaser to continue the engrossment on the reverse side of the sheet, without writing over the vender's indorsement. Perhaps the law might prescribe that the vender shall write "*on each stamp*," leaving out "*the back of*."

(*h*) The Calcutta Regulation does not provide for the writing of the purchaser's name; in fact, it affords but little security, because a party purchasing a stamp with a fraudulent design, would give a fictitious name. Besides, stamps which have been purchased are transferable †, and the party who makes the transfer is not required to note to whom he hands the paper. The English law has, the Board believe, no rule prescribing either indorsement by vender, name of receiver, or date of sale; the date, however, may be useful, though not to any very valuable extent. The majority of the Mofussil judges who were consulted on the subject wished it to be retained.

(*i*) *Vide* remarks attached to letters (*g*) and (*h*.)

(*j*) The word "and" appears to be erroneously used for "or." In section 14 imprisonment *or* fine is prescribed for the offence therein provided for.

(*k*) Is the imprisonment to take place in the civil or criminal gaol? If in the latter, then with or without labour?

(*l*) It is presumed that this section is meant to meet the possibility of a vender gambling with his stamp store; that is to say, selling the stamps at low prices to raise money on an emergency, and taking his chance of being able to settle with the collector when the day of settlement arrives. But against this contingency a provision appears to be available without the aid of law, if the collector takes proper security. If he does not take proper security, the vender may perhaps be left either to sell his stamps at a lower rate, or to give them away; if he does not take proper security, then he is himself responsible to government.

(*m*) It seems necessary to specify the gaol, whether civil or criminal.

(*n*) Would it not be preferable to substitute for "within a reasonable time," "a time to be prescribed by the officer in charge of the stamp revenue."

(*o*) From the use of the word "district," it might be inferred that this section is intended to be confined to the zillahs. Might it not be preferable to use the terms "collector or other officer in charge of the stamp revenue," without adding the words "of the district."

(*p*) Query, insert "or which ought by account to be remaining."

(*q*) Query, "within a period to be prescribed by the said officer."

(*r*) Query, insert "or duly accounted for."

(*s*) A separate section appears to be required, enacting that the security of a deceased vender shall be responsible for such amount of cash as shall appear due from the said vender to government for stamps sold up to the period of his decease, and not duly accounted for to the collector. His executors appear, under section 17 of the draft, to be responsible only for accounts and for stamped paper which has not been issued.

(*t*) Query, insert "within a period to be prescribed by the collector or other officer in charge of the stamp revenue."

(*u*) Query, to omit the words "of the district."

Query,

* Orders of Government, dated 26th July 1827, for policies of insurance; Orders of Government, dated 15th February 1831.

† These transfers are legal under the provisions of the Calcutta and Mofussil Regulations.

Query, insert " or all or any of his sureties."

Query, insert " or against the vender and his surety, or sureties jointly." (*v*) (*w*)

Query, insert " of land revenue." (*x*)

Would it not be preferable to insert this section prior to section 16? (*y*)

Our present law provides an exchange in certain cases where instruments, although complete, that is to say, with the signatures attached, are not brought into use*. (*z*)

Query, insert " or stamps."† (*aa*)

Vide observations at letters (*g*) and (*h*). (*ab*)

A provision appears requisite to allow parties to bring or send their own materials to be stamped, in the cases provided for in section 20 of the draft and all others. *Vide* section 7, Regulation XII. of 1826, and section 11, Regulation X. of 1829. Policies of insurance must necessarily be supplied by parties taking the stamps; the stamps upon them are of various amounts, not to be provided but by the use of two, and often three, dies. (*ac*)

Query, insert " town or." (*ad*)

Might not this section precede section 21, or follow section 23; standing as it does, it disconnects two sections having reference to each other; perhaps section 23 should come first, then section 21 next, and section 22 last. (*ae*)

Query, insert " or who shall alter the value impressed on any government stamp." It is a very common practice to alter the word " anna " in a piece of stamped paper, to " rupee," and although this alteration cannot touch the water mark, yet it helps to impose upon the peasants with little reading, who frequently purchase stamps. (*af*)

Query, insert " proper." Is it not possible that the description of receipt here contemplated, which is an acquittance or discharge, may be confounded with receipts granted by bankers and agents for deposits of money? (*ag*)

Query, might it not be preferable that the section should run thus: " It shall be lawful for the party to whom the receipt is to be given to refuse the payment of the demand until a signed receipt on a proper stamp shall be presented to him." A party making payment under section 24 of the draft, may deduct the amount of a stamp, and yet not provide one; and even if he did, he could not compel the party receiving payment to sign it. (*ah*)

If it is intended to confer this power upon any but a judicial authority, will it not be necessary to provide how the decision of the " officer," vested with such powers, is to be carried into effect; as for instance, no court, the Board imagine, would imprison on a collector's warrant or adjudication in a stamp case if not provided for by law, as in section 20, Regulation X. of 1829. It is provided in section 26 of the draft, that the collector shall commit to prison, but he has no prison of his own, and it may be doubtful whether an officer having a gaol would allow him to commit to that gaol unless the law so provided. There can be little doubt but that the gaoler of the Calcutta gaol would refuse to receive a prisoner committed on a warrant or judgment of the collector of Calcutta. In the new Customs' Act, where imprisonment in commutation of fine forms part of a penalty, we have been obliged to commit the adjudication of the case to the justices of the peace. (*ai*)

Further, it does not appear that the collector has any power to arrest in pursuance of his own warrant (supposing him to pass sentence under section 26), even although a gaol was provided for the confinement of the prisoner.

Query, in what gaol? Under the present law, parties guilty of extortion are liable under clause 9, section 10, Regulation X. of 1829 (construed in connexion with section 20 of the same Regulation) to imprisonment in the criminal gaol. (*aj*)

Query, insert " and the schedules annexed to it." (*ak*)

(signed) *S. G. Palmer*,
Acting Secretary.

Board of Customs, Salt and Opium,
27 July 1836.

* Clause 2, sec. 10, Reg. XII. of 1826; and clause 1, sec. 12, Reg. X. of 1829.

† As for a stamp of 100 rupees, 10 stamps to be given of 10 rupees each.

Sep. India Cons. 20 Oct. 1837. No. 22. Enclosure.

OBSERVATIONS and SUGGESTIONS for the Consideration of the Indian Law Commission.

On the Draft of Schedule (A.)

(*a*) Query, would it not be preferable thus; "If for the payment of any sum periodically or by instalments;" periodical payments may be made without their being monthly or annual.

(*b*) Noticed in the separate letter, paragraph 4.

(*c*) Noticed in the separate letter, paragraph 5.

(*d*) Perhaps better as it stands just above, "The same stamp as for the same instruments payable," &c. There are many instruments mentioned in No. 3.

(*e*) Query, "Any of the instruments described in No. 3, payable at a period exceeding one year after date or sight." This appears more specific than the entry 5, as it stands in the Draft Schedule.

(*f*) Promissory notes and orders payable by instalments might perhaps be entered here by transferring No. 40, and by inserting at the heading above No. 40, "Promissory notes, whether in the form of bank notes, bank post bills, or otherwise." *See* Bills of Exchange.

(*g*) Noticed in the separate letter, paragraph 6.

(*h*) May perhaps be included in the general exemptions; indeed it falls naturally under that head, Government being a party to the transaction.

(*i*) The term agent in this place has given rise to a question, owing to the signification generally attached to that word in Bengal; might not "person or persons" be substituted?

(*j*) Noticed in the separate letter, paragraph 8.

(*k*) Query, after government securities, insert, "or bank shares."

(*l*) Noticed in the separate letter, paragraph 9.

(*m*) Query, included in the general exemptions?

(*n*) Ought not to be numbered; no stamp being required by Draft Schedule (A.) It should also precede exemptions, that is to say, it should stand after the number prefixed to collateral bonds, as suggested in the separate letter, and before the word "exemptions."

(*o*) Query, included in general exemptions?

(*p*) Query, to be treated on the principle laid down at entry 13? If the amount of composition exceeds 1,000 rupees, 8 rupees. If the amount of composition does not exceed 1,000 rupees, then according to the scale prescribed for bonds for the payment of money. At entry 16, "Conveyances," a word is employed to which the Board think an objection exists; the word is "heritable," which might perhaps be exchanged for "immoveable," as conveying at once the meaning which is, the Board believe, attached by law rather than common language to the word heritable.

(*q*) Query, to insert as in "Bonds."

	Rs.
200,000 - - - - -	175

In *bonds* for two lacs of rupees, 120 rupees is chargeable as stamp duty; intermediate sums between two and three lacs, are liable to a stamp of 150 rs. In conveyances, a conveyance where the consideration money is two lacs of rupees, pays 150; but there is no increase of stamp duty on any conveyance for an intermediate sum between two and three lacs of rupees; 175 rs. is suggested, to bring the entry to a correspondence with that of bonds.

(*r*) Query, both the entry and the exemption note to be included in the general exemptions*; the words "exemptions continued," at the end of the note, may then be omitted.

(*s*) Query, insert "or instruments" after "deeds."

(*t*) It is suggested, whether Nos. 18, 19, and 20 might not be thrown under one head, and somewhat shortened, as follows:

No. 18.

* *Vide* letters (*tt*) in these observations.

No. 7. On Stamps.

No. 18. Copy of any deed or instrument, or any part thereof, attested to be a true copy or true extract, where such copy or extract shall be furnished to a party to such deed or instrument, or to any other person on his or their behalf, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby, the same stamp as required for the original deed by this schedule; and where such copy or extract shall be made for the security or use of any person not being a party to such deed or instrument, or taking any benefit or interest secured thereby, per sheet, 8 annas. Under Regulation X. of 1829 (followed by the Commissioners in No. 20), parties, by merely taking extracts, may evade the duty intended to attach to the copy whereby they prove their interest. If their interest is equally proved by an extract, there is no reason why the extract should not bear the full duty, *i. e.* the same as required for the original deed from which it is extracted.

Query, instead of "from any of the public offices," insert "from any of his Majesty's or the Honourable Company's courts or offices, per sheet." The entry at No. 21 would run alphabetically thus, "Copies authenticated, of any," &c. (*u*)

It is suggested that these exemptions, adopted from Regulation X. of 1829, are not requisite, being natural exemptions, if the terms may be used. In the first case of exemption, the party never intending to plead the copy in a court would naturally avoid putting himself to the expense of a stamp; while, when copies are retained in a public office, Government becomes in some sort a party to the transaction. In the second case of exemption, papers for which stamps are not specially required by the Regulations are, as a matter of course, exempt. (*v*)

Query, to be inserted under letter, thus, "Gift and dower, deeds of," &c. (*w*)

This number does not appear essential; it falls naturally under the head of "Agreements." (*x*)

Query, insert "or instrument." (*y*)

Query, omit "real." (*z*)

Query, insert "or interest therein." (*aa*)

Query, "periodical rent." (*bb*)

Query, "periodical" in all places. (*cc*)

Taken from the existing Regulations, but not requisite. There is no stamp required when the rent does not exceed 12 rupees per annum. (*dd*)

Taken from existing Regulations; but as far as the word "also" (that word inclusive) the exemption can be omitted, and included under general exemptions; the remainder of the exemption is necessary. (*ee*)

From Regulation X. of 1829, but the note does not appear necessary. The exemption made in the previous exemption, with regard to pottahs and kabooleats exchanged with ryots and the other *actual cultivators* of the soil, clearly confines the exemption to transactions in which ryots and the other actual cultivators of the soil *only* are concerned; and, of course, the exemption so limited could not be pleaded by the zemindars, &c. contracting those engagements with each other, which are adverted to in the note. (*ff*)

This entry ought not to bear a number, but the particle "for" should be prefixed, as in the case of the entry, "For copies of revenue and judicial papers," &c., following No. 21. (*gg*)

It is suggested whether the schedule could not be materially shortened in this place by using a single entry, to the following effect: (*hh*)

"33. Mortgage (kutkubala bye, bilvufa, bhog bhunduck) or other security of or affecting any lands, estate, or property, real or personal, or government securities, or bank shares, also any agreement, contract, or bond, accompanied with a deposit of title deeds, for making a mortgage or other security on any estate or property therein comprised. The same stamp as for a bond *for the like purpose.*"

No. 7. On Stamps.

The words "for the like purpose" appear sufficiently to indicate that the rate of duty chargeable is upon bonds for the like purpose. Thus No. 35 in the draft provides for deeds of mortgage given for the security of annuities, &c., for an indefinite period, such as life annuities, "the same stamp as for ten times the annual payment." The proposed entry says, "the same stamp as for a bond *for the like purpose*." On turning to the head "Bond, No. 9," we find a bond for the like purpose, that is to say, "for annuities for an indefinite period, such as a life annuity;" and the stamp the same as for a bond for the payment of a sum equal to ten times the yearly payment.

The same observation applies to No. 8 and No. 10. While the Board have proposed in their separate letter, paragraph 9, a provision for retaining collateral bonds, which will provide for that transaction, which, under the heads Deeds of Mortgage, in the Draft Schedule, commences, "Where a bond may have been already taken for the amount secured," &c.

(*ii*) Same as existing Regulations; but the Board do not clearly apprehend why this description of mortgage and assignment should not bear the same duty as any other mortgage.

(*jj*) The whole entry might be left under the head of Mortgage, as suggested at (*h h*).

Noticed in the separate letter, paragraph 10.

(*kk*) *Vide* observation at (*f*).

(*ll*) Noticed in the separate letter, paragraph 12.

(*mm*) Query, included in the general exemptions?

(*nn*) Apparently unnecessary, *vide* remark at (*f f*).

(*oo*) Need not be inserted if the suggestion in the separate letter, paragraph 12, be adopted.

(*pp*) Query, insert "Bank shares," &c.

(*qq*) Query, to run thus:—

"The same stamp as for a bond for the payment of an equal amount or value, or in cases in which the value shall not be expressed, an optional stamp; *see* section 4 of the Act."

(*rr*) Need not be inserted here; *vide* observations at (*w*).

(*ss*) Query, omit "of government;" an officer of one of his Majesty's courts may be a party, who, though a public officer, is not an officer of government, as ordinarily understood.

(*tt*) Add as follows: "Neither does it extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of court, in which cases the purchasers shall be required to pay, along with the purchase-money, the price of the requisite stamp, or otherwise provide such stamp*, and shall receive from the officer conducting the sale, a deed of sale (byenama) executed on the proper stamp."

(*uu*) "No instrument or writing specified in this schedule (excepting copies and extracts, provided for in Nos. 20 & 21), which shall not be contained in one sheet or piece of paper, or other material, shall be considered to be on the proper stamp, unless the seals and signatures of the parties and witnesses be on the stamp required for the same in this schedule."

The above change in the terms of the general rule is proposed as making the penalty positive and more specific. The words, "It shall suffice," in this part of Regulation X. of 1829, seem to leave an opening for dispute.

(signed) *S. G. Palmer*,
Acting Secretary.

Board of Customs, Salt and Opium,
27 July 1836.

* This addition appears necessary to allow of parties producing stamps which they may, for their convenience, have purchased elsewhere.

No. 7.
On Stamps.

Sep. India Cons.
20 Oct. 1837.
No. 23.
Enclosure.

(No. 1.)

OMISSIONS for the Consideration of the Indian Law Commission.

In the Draft of Schedule (A.)

OMISSIONS.	REMARKS.
1. APPOINTMENT in execution of a power of land, &c., or of any use or interest therein, such as, for instance, the nomination of new trustees.	1. IF not specially provided, this would fall under "Deeds," whereby difficulty will arise in apportioning the duty, deeds being now chargeable with *rateable* duty.
2. Conveyances where the consideration money is not set forth.	2. Attornies sometimes evade the *ad valorem* duty by simply having the words "full value of the property" written in place of the consideration. The only way to make these conveyances pay that duty is to prescribe the highest *ad valorem* duty (say 150 rupees), when the consideration is omitted.
3. Conveyances where the consideration is an annuity, or government securities, or bank shares, or mortgage, judgment bond, &c.	3. If not distinctly provided, much difficulty will arise in deciding upon the proper stamp to be borne on these conveyances with reference to the head "Deeds."
4. Conveyances, where the consideration is mortgage or bond debt, affecting the property conveyed, to be afterwards paid by the purchaser; or where the same is any sum of money charged on such property by way of mortgage or otherwise.	4. If not distinctly provided, much difficulty will arise in deciding upon the proper stamp to be borne on these conveyances with reference to the head "Deeds." No doubt this case comes within the head "Conveyances," but the object is to relieve parties from a second *ad valorem* duty (mortgage having paid it once). *See* Advocate-general's Letter, dated 7th June 1830.
5. Conveyance of equity or right of redemption, or of reversionary right, or interest, &c. in mortgaged property.	5. No doubt this case comes within the head "Conveyances," but the object is to relieve parties from a second *ad valorem* duty (mortgage having paid it once). *See* Advocate-general's Letter, dated 7th June 1830.
6. Transfers of bills of exchange, promissory notes, or the like	6. Should be distinctly exempted under Conveyances.
7. Declaration of use or trust of or concerning estate, &c.	7. The same remark as made opposite to No. 1.
8. Dissolution of copartnership, deed or instrument of.	8. Ditto.
9. Duplicate or counterpart of deeds, instruments, &c.	9. Sometimes duplicates, triplicates, &c. have been classed with "copies," and at others as originals. It is necessary to provide for them distinctly.
10. Notarial Act.	10. It is not a deed, &c.
11. Policy where there is no specification of the sum insured, such as granted by the Laudable.	11. Should be specially provided, as the very provisions of other sorts of policies leads parties to suppose that it is not intended to charge this description, though it may be classed with contracts.
12. Policy	12. At

No. 7.
On Stamps.

OMISSIONS.	REMARKS.
12. Policy where the insurance is made for any other than a pecuniary consideration, such as mutual insurances.	12. At present there are no mutual insurances effected in Calcutta, but it is as well to provide against the possibility of the underwriters entering into a combination to evade the government dues, which it is likely they will when the new Act comes out, as that law will make all unstamped deeds null and void; and even if the insurers did receive the premium, they could still avoid the stamp by omitting to insert it in the policy.
13. Procurations, deed, or instrument.	13. The same remark as made opposite to No. 1.
14. Recognizance.	14. It is not a deed.
15. Reconveyance of mortgaged property, transfer or assignment of mortgage or other similar security.	15. The same remark as made opposite to the second case in No. 4. *See* Advocate-general's Letter, dated 2d April 1828.
16. Release or discharge of lands, &c. given to an executor or administrator.	16. The same remark as made opposite to No. 1.
17. Revocation of use or trust, of or concerning estate, &c., or of any power previously granted.	17. Ditto.
18. A rule for ascertaining the value of annuities settled.	18. In the case of annuity bonds for an indefinite period, the duty chargeable is ten times the yearly payment. The absence of a similar rule in settlements, will occasion difficulty in fixing an optional stamp.
19. Deeds of appointment, or apportionment in execution of powers given by previous settlement, will, &c. in favour of persons named.	19. Should be distinctly exempted under settlement.
20. Deeds for securing gifts or dispositions, made by previous settlements, wills, &c.	20. Should be distinctly exempted under settlements.
21. Surrender of term, or uncertain interest in lands, &c.	21. The same remark as made opposite to No. 1.
22. Warrant of attorney to confess and enter up a judgment in court.	22. Not a deed. *See* Advocate-general's Letter, dated 26th February 1829.
23. A provision for charging severally two or more matters, separately engrossed on one sheet of paper or other material, or blended in one deed, such as lease and release, or conveyance and indemnity.	23. Particularly essential in checking the practice of attornies and others of blending two or more deeds.

Note.—The whole of these omissions are entered under proper heads in the Draft No. 2, and for ready reference marked with an asterisk (*).

(signed) *Ramchunder Ghosaul.*

Calcutta Stamp Office,
27 July 1836.

(No. 2.)

SCHEDULE referred to in Section of the Act.

	STAMP REQUIRED.
Agreement (ikrar) or contract, accompanied with a deposit of title deeds for making a mortgage or other security on any estate or property therein comprised - - -	*See* Mortgage.
Agreement (ikrar) or any minute or memorandum of agreement, concerning any matter or thing not otherwise charged in this schedule, nor expressly exempted from all stamp duty - - - - -	Shall be subject to the same rules as prescribed for bond.
Exemptions.	
Agreement for the hire of labour.	
Agreement carried on by letter through the general post, in respect to any merchandize.	
Annuity deed, granting any for a pecuniary consideration	*See* Conveyance and Bond.
Annuity deed, if voluntary or gratuitous - - -	*See* Settlement.
Appointment in execution of a power, of land or other property, real or personal, or of any use or interest therein - - - - - - - - - - -	The same duty as hereinafter prescribed for collateral deed, under head Conveyance.
Assignment upon the sale or mortgage of any property -	*See* Conveyance; Mortgage.
Assignment or transfer of bond, mortgage, policy of insurance, or other similar security, or the benefit thereof, or of the money or securities thereby secured - -	The same duty as hereinafter prescribed for collateral deeds, under head Conveyance.
Bank note, bank post bill. - - - - - - -	*See* Promissory Note.
Bargain and sale of any estate, upon the sale thereof, or by way of mortgage - - - - - - - - -	*See* Conveyance; Mortgage.
Bargain and sale (or lease), for a year, for vesting the possession of lands or other property, and enabling the bargainee to take a release upon the sale or mortgage thereof - - - - - - - - - -	The same duty as hereinafter prescribed for collateral deeds under head Conveyance.

Bill of exchange, draft, promissory note, hoondee, burat, teep, and other order or obligation (unattested) for the payment of money—	If payable either at Sight or on Demand, or at any Period not exceeding Three Months after Date or Sight, shall be charged		And if payable at a period exceeding Three Months after Date or Sight, but not exceeding one Year, shall be charged	
	C's. rs.	*a.*	*C's. rs.*	*a.*
Not exceeding 25 rupees - - -	–	1	–	2
Exceeding 25 rs., but not exceeding 50 rs.	–	2	–	4
50 - ditto - - - 100 -	–	4	–	8
100 - ditto - - - 200 -	–	8	–	12
200 - ditto - - - 400 -	–	12	1	–
400 - ditto - - - 800 -	1	–	1	8
800 - ditto - - 1,600 -	1	8	2	–
1,600 - ditto - - 3,000 -	2	–	2	8
3,000 - ditto - - 5,000 -	2	8	4	–
5,000 - ditto - - 10,000 -	4	–	6	–
10,000 - ditto - - 20,000 -	6	–	8	–
20,000 - ditto - - 30,000 -	8	–	12	–
30,000 - ditto - - 50,000 -	12	–	16	–
50,000 - ditto - - 100,000 -	16	–	20	–
100,000 - - - - -	20	–	25	–

(*continued*)

No. 7.
On Stamps.

	STAMP REQUIRED.
And if payable at a period exceeding one year after date or sight - - - - - - - - - -	Shall be charged as bond.
And if payable by instalments - - - - - -	The same duty as on a bond for a like term.
And if intended to be reissued - - - - - -	The same duty as prescribed for bill of exchange, &c. payable at a period exceeding three months after date or sight, but not exceeding one year.

Note.—The Governor of Bengal shall be competent to admit any bank, company, or corporation, to compound for the stamp duty chargeable on the bills of exchange, &c. issued by it, and notice of such admittance being given in the official gazette of Government, such bills of exchange, &c. shall be deemed and taken to be duly stamped, for the term therein mentioned.

The following Instruments shall be deemed and taken to be Bills of Exchange:

Drafts, promissory notes, hoondees, burats, teeps, and other orders or obligations within the intent and meaning of this schedule. All bills, drafts, promissory notes, hoondees, burats, teeps and other orders or obligations for the payment of money, either in cash, or by paper or other security, or for the delivery of any such security, in payment or satisfaction of any sum of money.

All bills, drafts, promissory notes, hoondees, burats, teeps, and other orders or obligations for the payment of money out of any particular fund, which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.

And all acknowledgments given by bankers, agents, or other persons, entitling the persons paying the money, or the bearer thereof, to a like sum.

Exemptions.

All drafts or orders for the payment of any sum of money in cash to the bearer on demand, drawn upon any bank, banker, or agent, or other persons residing within 20 miles of the place where such drafts or orders shall be drawn, provided such place shall be specified in such drafts or orders.

All bills of exchange or hoondees for the payment of money drawn *bonâ fide* from any place distant more than 100 miles from the place where the same are made payable, not negotiated after acceptance.

All foreign bills of exchange.

	C's. rs. a.
Bills of lading of or for any goods, merchandize, or effects to be exported or carried coastways - - - - -	1 —
Bill of sale absolute - - - - - - - -	*See* Conveyance.
Bill of sale as a security - - - - - - -	*See* Mortgage.

No. 7.
On Stamps.

	STAMP REQUIRED.
	C's. rs. a.
Bond, tumusook, or other obligatory instrument for the payment of money not otherwise particularly charged—	
Not exceeding 25 rupees - - - - - -	– 2
Exceeding 25 rupees, but not exceeding 50 rupees -	– 4
50 „ ditto - 100 „ -	– 8
100 „ ditto - 200 „ -	1 –
200 „ ditto - 300 „ -	2 –
300 „ ditto - 500 „ -	4 –
500 „ ditto - 1,000 „ -	6 –
1,000 „ ditto - 2,000 „ -	10 –
2,000 „ ditto - 3,000 „ -	16 –
3,000 „ ditto - 5,000 „ -	20 –
5,000 „ ditto - 10,000 „ -	32 –
10,000 „ ditto - 20,000 „ -	40 –
20,000 „ ditto - 50,000 „ -	64 –
50,000 „ ditto - 75,000 „ -	70 –
75,000 „ ditto - 100,000 „	80 –
100,000 „ ditto - 150,000 „ -	100 –
150,000 „ ditto - 200,000 „ -	120 –
200,000 „ ditto - 300,000 „ -	150 –
And for every further lack of rupees beyond the said sum of 300,000 rupees - -	100 –
Bond given as a security for the repayment of money to be thereafter lent, advanced, or paid, or which may become due upon account current, whether together with or without any sum already advanced or due—	
Where the total amount of the money secured or to be ultimately recoverable thereupon shall be limited to a given sum - - - - - - -	The same duty as on a bond for such limited sum.
And where the money secured or to be ultimately recoverable thereupon shall be uncertain and without any limit - - - - - - - - -	The duty to be determined by the parties, but no recovery shall be made thereon in any court of a larger amount than may be covered by the stamp at the rate prescribed above.
Bond given as a security for the transfer or re-transfer of government securities or bank shares - - - - -	The same duty as on a bond for a sum of money equal to the selling price of such securities or shares.
Bond given as a security for the payment of an annuity, or of any sum or sums of money at stated periods—	
For any definite and certain term, so that the total amount of the money to be paid can be previously ascertained - - - - - - - - -	The same duty as on a bond for such total amount.
And for term of life, or any other indefinite period, so that the whole money to be paid cannot be previously ascertained - - - - - - -	The same duty as on a bond for a sum of money equal to ten times the yearly payment.
Bond given as a security for the delivery or accounting for any matter or thing capable of being valued - -	The duty to be estimated at the rate of the amount to be delivered or accounted for.
Bond given as a collateral security with some deed or investment chargeable with *ad valorem* duty - - - - -	The same duty as hereinafter prescribed for collateral deed under head Conveyance.

(*continued*)

No. 7.
On Stamps.

	STAMP REQUIRED.
Bond for the due execution of an office, or for the faithful discharge of any trust - - - - - - -	The duty to be determined by the parties, but no recovery shall be made on the instrument in any court of a larger amount than may be covered by the stamp at the rate prescribed for money bond.
Bond of any kind whatsoever not otherwise charged in this schedule, nor expressly exempted from all stamp duty - - - - - - - - - - - -	Optional duty as above, with like condition.
Exemptions.	
Arbitration bonds.	
Bonds to procure the admission of any child into any charitable institution.	
Charter-party, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter, or other writing between the captain, master, or owner of any ship or vessel, and any person, for or relating to the freight or conveyance of any money, goods, or effects, on board of any such ship or vessel - - - - - -	If the money payable under the deed amounts to or exceeds 1,000 rupees, 8 rupees; and if less than 1,000 rupees, at the rate prescribed for bond.
Composition deed, or other instrument of composition between a debtor or debtors, and his, her, or their creditors - - - - - - - - - - - -	*C's. rs. a.* 8 —
Contract, if not otherwise charged or exempted from duty - - - - - - - - - - - -	Shall be subject to the same rules as prescribed for bond.
Conveyance (kubala bynama), or deed, or instrument of any kind or description whatsoever, executed for the sale or transfer of any lands, tenements, rents, annuities, or other property, real or personal, immoveable or moveable, or of any right, title, interest, or claim in, to, out of, or upon any lands, tenements, rents, annuities, or other property whatsoever, not otherwise charged in this schedule—	
Where the consideration therein or thereupon expressed shall not exceed 50 rupees - - - -	— 8
And where the same shall exceed—	
50 rupees, but shall not exceed 100 rupees -	1 —
100 „ ditto - 200 „ -	2 —
200 „ ditto - 500 „ -	4 —
500 „ ditto - 1,000 „ -	8 —
1,000 „ ditto - 2,000 „ -	12 —
2,000 „ ditto - 3,000 „ -	16 —
3,000 „ ditto - 5,000 „ -	20 —
5,000 „ ditto - 8,000 „ -	32 —
8,000 „ ditto - 12,000 „ -	40 —
12,000 „ ditto - 20,000 „ -	50 —
20,000 „ ditto - 30,000 „ -	64 —
30,000 „ ditto - 50,000 „ -	80 —
50,000 „ ditto - 100,000 „ -	100 —
100,000 „ ditto - 200,000 „ -	150 —

	STAMP REQUIRED.	No. 7. On Stamps.
And where the same shall exceed 200,000 rupees, for each and every lack of rupees beyond the said sum of 200,000 rupees an additional duty of - - -	C's. rs. a. 100 –	
And where there is no consideration set forth - -	150 –	(*)
And where the consideration in any such deed or any part thereof shall be an annuity - - - -	The same duty as on a conveyance for a sum of money equal to ten times the yearly payment.	(*)
And where the same shall be government securities or bank shares - - - - - - - -	The said *ad valorem* duty shall be charged on the selling price of such securities or shares.	(*)
And where the same shall be a mortgage, judgment, or bond, or other security, the amount whereof shall be recoverable by the holder whether payable in money or otherwise - - - - - - - -	The said *ad valorem* duty shall be charged on the sum due thereon.	(*)
And where the same shall be any mortgage, bond, or other debt affecting the property conveyed, to be afterwards paid by the purchaser, or where the same shall be any sum of money charged on such property by way of mortgage or otherwise - - -	The said *ad valorem* duty shall be charged on such debt or sum of money.	(*)
Conveyance of equity, or right of redemption, or of reversionary right or interest of, in, to, or out of any lands or other property in mortgage, or standing pledged or charged for or with the payment of any sum of money - - - - - -	Shall be deemed and taken to be a conveyance upon the sale of property, and charged with the *ad valorem* duty on the amount due on such mortgage or that of any further sum paid or agreed to be paid.	(*)
Provided, however, that in the three preceding cases the parties, on the production of any such mortgage or security, shall be entitled from the collector of stamps to a refund of the duty on so much of the principal sum lent thereon as shall then remain unpaid.		

Note.—Where more deeds or instruments than one shall be prepared to execute the conveyance in the manner desired by the parties, all deeds other than the principal shall be charged with a like stamp to the principal deed, if of value not exceeding eight rupees, which sum shall be the maximum duty on collateral deeds.

Exemptions.

All transfers of bills of exchange, promissory notes, or the like.

All transfers of subscriptions to any of the government loans or other government securities; also of shares of the Bank of Bengal.

Copartnership:		
Deed or instrument of - - - - - - -	8 –	

(*continued*)

No. 7. On Stamps.		STAMP REQUIRED.
	Copy of any deed or instrument, or any part thereof attested to be a true copy or true extract—	
	Where such copy or extracts shall be furnished to a party to such deed or instrument, or to any other person on his, her, or their behalf, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby - - - - - - - - -	The same duty as prescribed for the original deed or instrument in this schedule.
	And where such copy or extract shall be made for the security or use of any person not being a party to such deed or instrument, or taking any benefit or interest secured thereby - - - - - -	*C's. rs. a.* – 8
	Counterpart of deeds - - - - - - - - -	*See* Duplicate.
(*)	Declaration of use or trust, of or concerning any estate or property, real or personal - - - - - -	The same duty as hereinbefore prescribed for collateral deed under head Conveyance.
	Deed of any kind whatsoever not otherwise charged in this schedule, nor expressly exempted from all stamp duty - - - - - - - - - -	Shall be subject to the same rules as prescribed for bond.
	Discharge for money - - - - - - - - -	*See* Receipt.
(*)	Dissolution of copartnership, deed or instrument of - -	8 –
	Draft for money - - - - - - - - - -	*See* Bill of Exchange.
(*)	Duplicate or counterpart of any deed, instrument, or writing - - - - - - - - - -	The same duty as prescribed for the original in this schedule.
	Provided, however, that the Governor of Bengal shall be competent to exempt from the payment of such duty, or any part thereof, duplicates of such deeds or instruments as he may deem fit; and notice of such exemption being given in the official Gazette of Government, such duplicates shall be admitted in evidence in court, as may be therein prescribed.	
	Exchange of lands or other property:	
	Any deed or instrument whereby any property or interest therein shall be conveyed or surrendered in exchange for other property, where no sum of money shall be paid, or agreed to be paid, for equality of exchange - - - - - -	8 –
	And where any sum of money shall be paid or agreed to be paid for equality of exchange - - -	The same *ad valorem* duty as for a conveyance for such sum over and above the said duty of 8 rupees.

	STAMP REQUIRED.	
Lease, release, or deed, minute, memorandum, or legal or equitable article or instrument not otherwise charged, for selling or devising lands, tenements, or other real property—		
If granted in consideration of a sum of money by way of fine or premium paid for the same, without any rent - - - - - - - - - - -	The same duty as for a conveyance on the sale of lands for such consideration.	
And if granted in consideration of a rent payable for the same, without any sum of money by way of fine or premium—	For a Term not exceeding One Year.	For a Term exceeding One Year; also for an indefinite Term.
	C's. rs. a.	*C's. rs. a.*
Where the rent calculated for a whole year shall exceed—		
12 rupees, but not exceed 24 rupees -	– 4	– 8
24 „ - - ditto - - 50 „ - -	– 8	– 12
50 „ - - ditto - - 100 „ - -	– 12	1 –
And where the same shall exceed—		
100 rupees, but not exceed 250 rupees -	1 –	2 –
250 „ - - ditto - - 500 „ -	2 –	4 –
500 „ - - ditto - 1,000 „ -	4 –	8 –
1,000 „ - - ditto - 2,000 „ -	8 –	12 –
2,000 „ - - ditto - 4,000 „ -	12 –	16 –
4,000 „ - - ditto - 6,000 „ -	16 –	20 –
6,000 „ - - ditto - 10,000 „ -	20 –	32 –
10,000 „ - - ditto - 50,000 „ -	32 –	64 –
And where the same shall exceed 50,000 rupees -	64 –	80 –
And if granted in consideration of a sum of money by way of fine or premium, and also of a rent - -	Duty equal to both the *ad valorem* duties payable for a lease in consideration of a fine, and for a lease in consideration of a rent of the same amount.	
Counterpart of any lease, *i.e.* the kubooleat or the like - - - - - - - - - -	The same duty as on a lease.	
Exemption.		
All leases and their counterparts, executed and exchanged with ryots or other actual cultivators of the soil, and all security bonds executed as part of the same transactions.		
Letter or power of attorney, or commission or factory in the nature thereof:		
Mooktarnamah not otherwise charged.		
Power for any one special, that is to say, particular act or the acts connected with one particular case, suit, or transaction - - - - - - -	*C's. rs. a.* – 8	
General, *i.e.* not restricted as above to one case, suit, or transaction - - - - - - - -	4 –	

(continued)

No. 7. On Stamps.

	STAMP REQUIRED.
	C's. rs. a.
Letter of licence from creditor or debtor - - - - -	8 –
Mortgage (kutkubalah bye, bilvufa, bhog bhunduk) or other security of or affecting any lands, estate, or property, real or personal, or government securities, or bank shares; also any agreement, contract or bond, accompanied with a deposit of title-deeds for making a mortgage or other security on any estate or property therein comprised - - - - - - - - -	The same duty as on a bond for the like purpose.
Notarial act - - - - - - - - - - -	2 –
Order for the payment of money - - - - - -	*See* Bill of Exchange.
Partition of estates or property, real or personal, by deed or instrument of partition—	
Where a sharer's portion shall not exceed in value 100 rupees - - - - - - - - - -	– 8
Exceeding 100 rupees, but not exceeding 200 rupees	1 –
200 ,, - - ditto - - 400 ,, -	2 –
400 ,, - - ditto - - 600 ,, -	4 –
600 ,, - - ditto - - 800 ,, -	6 –
And where the same shall exceed 800 rupees - -	8 –
And if any sum of money shall be paid, or agreed to be paid for equality of partition - - - - -	The same *ad valorem* duty as for a conveyance for such sum besides the above.
Policy of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives—	
Where the sum insured shall not exceed - 5,000 rs.	4 –
Exceeding 5,000 rupees, but not exceeding 10,000 ,,	8 –
10,000 ,, - - ditto - - 20,000 ,,	12 –
20,000 ,, - - ditto - - 50,000 ,,	16 –
And where it shall exceed 50,000 rupees - - -	20 –
Policy of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made of or upon any buildings, goods, wares, merchandize, or other property, from loss or damage by fire only, for every 1,000 rupees, and also for any fractional part of 1,000 rupees insured for any period whatever - - - - - - - - - -	1 –

	STAMP REQUIRED.	No. 7. On Stamps.
Policy of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made upon any ship or vessel, or upon any goods, merchandize or other property on board of any ship or vessel, or upon the freight thereof, or upon any other interest in or relating thereto for or upon any voyage—		
Where the premium or consideration for such insurance, shall not exceed the rate of two rupees per centum on the sum insured; for every sum of 1,000 rupees, and also for any fractional part of 1,000 rupees whereof the same shall consist - -	*C's. rs. a.* – 8	
And where the premium or consideration for such insurance shall exceed the rate of two rupees per centum on the sum insured; and also where the insurance shall be made for any other than a pecuniary consideration; for every sum of 1,000 rupees, and also for any fractional part of 1,000 rupees whereof the same shall consist - - - - - - -	1 –	(*)
Policy of assurance or insurance, or other instrument, by whatever name the same shall be called, of any kind or description above particularized, whereby an insurance shall be made without any specification of the sum insured - - - - - - - - - -	The duty to be determined by the parties, but no recovery shall be made on the instrument in any court of a larger amount than may be covered by the stamp at the respective rates prescribed above.	(*)
Power of attorney - - - - - - - - -	*See* Letter of Attorney.	
Procuration, deed or instrument of - - - - - - -	4 –	(*)
Promissory note, whether in the form of a bank note, bank post bill, teep, or otherwise - - - - - -	*See* Bill of Exchange.	
Purchase deed - - - - - - - - - -	*See* Conveyance.	
Receipt or discharge for or upon the payment of money, or on the delivery of any cheque, draft, bill, or other orders or promissory notes, or other securities for money—		
Exceeding 50 rupees, but not exceeding 100 rupees	– 2	
100 „ - ditto - - 200 „	– 4	
200 „ - ditto - - 500 „	– 8	
500 „ - ditto - - 1,000 „	– 12	
1,000 „ - ditto - - 2,000 „	1 –	
2,000 „ - ditto - - 3,000 „	1 8	
3,000 „ - ditto - - 5,000 „	2 –	
5,000 „ - ditto - - 8,000 „	2 8	
8,000 - - - - - - - - -	4 –	
And where any sum of money whatever shall be therein expressed or acknowledged to be received in full of all demands; and also where a general acknowledgment of the settlement of debts, accounts, or other demands, shall be contained, without specifying the amount thereof - - -	4 –	

(*continued*)

No. 7. On Stamps.		STAMP REQUIRED.
	Note.—The duty hereby imposed on receipts or discharges shall be paid by the party giving the same, and if divers unstamped receipts or discharges be offered to evade the payment of the said duty, or if a stamped receipt or discharge be refused, it shall be lawful for the other party to refuse in like manner the payment of the demand until a stamped receipt or discharge shall be given.	
	Exemptions.	
	Receipts or discharges written upon bills of exchange, promissory notes, or the like, for the payment of money duly stamped.	
	Receipts or discharges indorsed, or otherwise written upon, or contained in any bond, mortgage, or other security, or any conveyance, settlement, deed, or instrument whatever, duly stamped, acknowledging the receipt of the consideration therein expressed, or the receipt of any principal money, interest, or annuity thereby secured.	
	Receipts or discharges by deeds duly stamped.	
	Receipts or discharges given for the purchase-money of subscriptions to any of the government loans or other government securities, or shares of the Bank of Bengal, and for every dividend or interest paid thereon.	
	Receipts or discharges given to servants for having rendered account of trusts and monies committed to them.	
	Letters by the general post, acknowledging the safe arrival of any bills of exchange, promissory notes, or other securities for money.	
(*)	Recognizance, statute merchant, or statute staple - -	The same duty as on a bond for the like purpose.
	Exemption.	
	Recognizance taken before any justice or justices of the peace.	
(*)	Reconveyance of mortgaged property - - - -	The same duty as hereinbefore prescribed for collateral deeds, under head Conveyance.
	Release upon the sale or mortgage of any property - -	*See* Conveyance; Mortgage.
(*)	Release or discharge of lands or other property given to any executor or administrator - - - - -	The same duty as on a receipt for a sum of money equal to the value of such lands or other property.
(*)	Revocation of any use or trust of or concerning estate or property, real or personal, or of any power previously granted - - - - - - - - - -	The same duty as on the deed or instrument granting such use, or trust, or power.
	Settlement: Any deed or instrument, whether voluntary or gratuitous, whereby any principal sum or sums of money, or any annuity, or any government securities, or bank shares, or other property, real or personal, shall be settled, or agreed to be settled, upon or for the benefit of any person or persons in any manner whatsoever -	The same *ad valorem* duty as on a bond for equal amount or value, or in cases in which the value shall not be expressed, at the rate chosen by the parties under the rule and condition prescribed for bonds, where the amount secured shall be uncertain.

	STAMP REQUIRED.	No. 7. On Stamps.
Note.—The value of annuities shall be estimated at the rate of ten times the yearly payment.		(*)
Exemptions.		
Wills, testaments, or the like, deeds or instruments of appointment, or appointment in execution of powers given by any previous settlement, deed, or will, to or in favour of persons specially named or described as the object of such persons.		(*)
Deeds or instruments merely declaratory of trust, pursuant to or for securing any gifts or dispositions made by any previous settlement, deed, or will.		(*)
Surrender of any term or terms of years of, or uncertain interest in any lands or other property - - - -	The same duty as hereinbefore prescribed for collateral deed, under head Conveyance.	(*)
Transfer upon the sale or mortgage of any property - -	*See* Conveyance; Mortgage.	
Transfer of bonds, mortgage, or other security - -	*See* Assignment.	
Warrant of attorney to confess and enter up a judgment in court - - - - - - - - - -	The same duty as on a bond for the like purpose.	(*)
General Rules.		
1. If any two or more distinct matters shall be contained in the same sheet, or piece of paper, or other material, or in the same deed, instrument, or writing, in respect of each of which matters a stamp duty shall be payable, then such matters shall be subject to the same duties as shall be payable in respect of such distinct matters.		(*)
2. No deed, instrument, or writing, chargeable with stamp duty, which shall not be contained in one sheet, or piece of paper, or other material, shall be deemed or taken to be duly stamped, unless the signature and seal of the parties and witnesses shall be on the sheet or piece bearing the stamp.		
General Exemption and Rule.		
Deeds, instruments, and writings of any kind in which government, or any Board, commission, court, or public officer, may, in a public capacity, be a party.		
Note.—This exemption shall not extend to deeds, instruments, and writings executed to or by the court of wards, local agents, or officers acting under their authority, or to deeds, instruments, and writings executed for the sale made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of court, in which cases the purchasers shall be required to provide the requisite stamped paper or other material.		

Calcutta Stamp Office, (signed) *Ramchunder Ghosaul.*
27 July 1836.

No. 7.
On Stamps.

Sep. India Cons.
20 Oct. 1837.
No. 25.
Enclosure.

OBSERVATIONS and SUGGESTIONS for the Consideration of the Indian Law Commission.

On the Draft of Schedule (B.)

Registers' courts are abolished.

(a) Provincial courts of appeal are abolished.

(b) Query, add "only in matters relating to their treatment in gaol when the
(c) prisoners are confined under a civil process, and in matters relating to their treatment in gaol, and the case in which they are confined under criminal process."*

(d) Query, Petition to the Board of Customs, Salt, and Opium, from molunghees, and from ryots engaged in the cultivation of the poppy on account of Government, only in matters connected with the manufacture of salt or the cultivation of the poppy on account of Government, or with their claims for payment or for protection against extortion on the part of the officers of the Salt and Opium departments.

(e) Query, to run thus:

"Plaints, petition for, in regular original suits, and regular and special appeals instituted, &c."†

(f) "Plaint, petition of."

Also No. 8, the words "Plaint, petition of, in," might precede the words "summary claims."

(g) It might, perhaps be advisable to modify the rules respecting the refund of stamp duties on the adjustment of cases by razeenamah. At present there is very inadequate security against the same refund being made oftener than once. This abuse has actually occurred, nor would it be checked under the rule proposed in the Draft Schedule (B.)

A rule to the following effect is proposed for the consideration of the Law Commission:—

If the suit be dismissed on such application, before the pleadings have been completed and the case called up, and the plaintiff applies for a refund of the stamp duty paid on the plaint, the court, on ascertaining the correctness of the application, by reference to the Nuthee, will give a certificate, stating the value of the stamp on which the plaint is written, with the number of the case on the file of the court, and the names of the parties in the case; he will then transmit the said certificate, with the paper on which the plaint is written, to the collector, and that officer, provided always there be no exception to the stamp, will return the plaint to the court, and with it the amount to be refunded, noting upon the plaint that the amount has been so forwarded to the court, with date of the transaction. The court will pay the amount so forwarded to the party entitled to receive the same, taking a receipt from him, on the face of the petition of plaint, and a separate receipt to be forwarded to the collector.

The above is merely a suggestion, the wording of which, if adopted, will of course have to be amended; it is offered partly with reference to abuse intended to be checked, and partly with advertence to circular orders of the Sudder Dewanny, No. 86, dated 10th May 1833, &c.; No. 92, dated 9th August 1833.

The second rule respecting return of half the value of the stamp after the pleadings have been completed, will, of course, require a corresponding alteration.

Refund is made of stamp duty paid on plaints preferred to collectors of land revenue in summary suits connected with arrears or exactions of rent, and which have been adjusted without proceedings coming on in the collector's cutcherry. If it be deemed proper to authorize these refunds, a provision, similar to the above, will be requisite, with some alteration.

(signed) *S. G. Palmer*,
Acting Secretary.

Board of Customs, Salt, and Opium,
27 July 1836.

* *Vide* Circular Orders of the Sudder Dewanny Adawlut, No. 17, 28 May 1830.
† *Vide* Circular Orders of the Sudder Dewanny Adawlut, No. 27, 4 February 1831.

No. 7.
On Stamps.

(No. 1065.)

From *S. G. Palmer*, Esq., Acting Secretary, Board of Customs, Salt and Opium, to *F. Millett*, Esq., Secretary to the Indian Law Commission; dated 4th October 1836.

Sep. India Cons. 20 Oct. 1837, No. 26. Enclosure.

Sir,

With advertence to my letter of the 27th July last, I am directed to state that on a further consideration of the subject of that communication, it appears to the Board that an objection lies to the terms "unlimited" and "uncertain," in No 10, Schedule (A.), Regulation X. of 1829, followed by the Commissioners in No. 10 of the same schedule in the new Act. The circumstance of the terms in question not being sufficiently definite, and admitting of more than one construction, has given rise to a long and intricate discussion, now before Government, and the Board beg to suggest for the consideration of the Commission, whether it would not be preferable to word the No. 10, Draft Schedule (A.), in the new Act, thus: "Bonds, when the amount of money to be secured is not specified," which will place the meaning at present intended to be conveyed by the words "unlimited" and "uncertain" beyond the chance of misconstruction.

2. I am further directed to request that you will have the goodness to draw the attention of the Commissioners to the Rules contained in clause 5, section 2, Regulation XXVI. of 1814, and Section 8, Regulation XIX. of 1817, which it will probably be considered desirable to incorporate with the new Act, if Schedule (B.) be retained.

I have, &c.
(signed) *S. G. Palmer*,
Acting Secretary.

Revised Draft Stamp Act.

Sep. Indian Legis. Cons. 20 Oct. 1837. No. 27. Enclosure.

1. It is enacted, that from the day of Regulation XII. of 1826, and Regulation X. of 1829, of the Bengal Code, are repealed, except in so far as they rescind other Regulations, or parts of other Regulations, and except as regards matters which may have taken place before that day, and that the following provisions of this Act shall take effect from the same day.

2. And it is enacted, that for every instrument or writing which shall be executed on or after the said day, and which shall be of any of the kinds specified as requiring stamps by the Schedule (A.) annexed to this Act, there shall be payable to Government a stamp duty of the amount indicated in the said schedule to be proper for such instrument or writing, if one or more of the parties thereto be at the time of executing it within the limits of the territories subject to the government of the Presidency of Fort William in Bengal, or have passed those limits for the purpose of evading this provision.

3. And it is enacted, that it shall be lawful for the Governor-general of India in Council to prescribe from time to time the stamps to be used under the provisions of this Act, by an Order in Council, which order shall take effect from a time to be therein appointed, which shall not be less than one month after the date of the publication of the order in the Government Gazette.

4. And it is enacted, that within the territories subject to the government of the East India Company no instrument or writing, for which such duty shall be payable under the 2d section of this Act, shall be received as creating, transferring, or extinguishing any right or obligation, or as evidence in any civil proceeding in any court of justice, whether established by his Majesty's charter or otherwise, or shall be registered in any public office, or authenticated by any public officer, unless such instrument or writing either be upon a stamp prescribed as aforesaid by the Governor-general of India in Council, and of a value not less than that indicated

indicated to be proper for it by the said schedule, or be accompanied with a copy thereof upon a stamp so prescribed and of ten times the value so indicated.

5. And it is enacted, that within the territories subject to the government of the East India Company no larger sum shall in any court of justice, whether established by his Majesty's charter or otherwise, be recoverable by reason of any instrument or writing for which an optional stamp is indicated to be proper by the said schedule than the largest sum for which, if specifically stated in an instrument or writing of the same denomination, the stamp actually used under the option so given would be of sufficient value.

6. Provided always, that it shall be lawful for the Governor-general of India in Council to compound with any person or company for the stamp revenue derivable from promissory notes or post bills issued by such person or company, and that nothing in the 4th and 5th sections of this Act shall apply to promissory notes or post bills in regard to which such composition shall have been notified in the Government Gazette.

7. And it is enacted, that the expense of providing the proper stamp wherein to write any receipt shall, unless it be otherwise agreed on by the parties, be borne by the party giving the receipt.

8. And it is enacted, that within the territories subject to the presidency of Fort William in Bengal no instrument or writing, of any of the kinds specified as requiring stamps in the Schedule (B.) annexed to this Act, shall be filed, exhibited, or recorded in any court of justice, with respect to which court such instrument or writing is required by Schedule (B.) to have a stamp, or shall be received or furnished by any public officer, unless such instrument or writing be upon a stamp prescribed as aforesaid by the Governor-general of India in Council, and of a value not less than that indicated to be proper for it by the said Schedule (B.).

9. And it is enacted, that every provision contained in either of the schedules annexed to this Act shall be of the same force as if it were contained in the body of the Act.

10. And it is enacted, that it shall be lawful for the Governor-general of India in Council to appoint officers for the collection of the stamp revenue, and to prescribe the duties of such officers, and to assign districts to such officers, and to license or cause to be licensed venders of stamps.

11. And it is enacted, that every vender of stamps shall at all times have his licence, together with the schedules annexed to this Act, stuck up in a conspicuous situation in the place where he sells the stamps, on pain of a fine not exceeding 50 rupees.

12. And it is enacted, that every vender of stamps shall write on the back of each stamp which he issues the date of issue, the name of the person to whom it is issued, and his own ordinary signature, on pain of a fine not exceeding 100 rupees.

13. And it is enacted, that any vender who shall knowingly write a false date or name on the back of any stamp, shall be punished by a fine not exceeding 500 rupees, or imprisonment not exceeding three months, or both.

14. And it is enacted, that every vender of stamps shall, without delay, issue any stamp which he has in his possession for sale on demand by any person tendering the value in any currency which the vender is duly authorized to receive in payment for stamps, on pain of a fine not exceeding 100 rupees.

15. And it is enacted, that any vender who demands or accepts for any stamp any consideration other than the value thereof in such currency as he is duly authorized to receive in payment for stamps, shall be punished by a fine not exceeding 100 rupees.

16. And it is enacted, that any vender who demands or accepts for any stamp any consideration exceeding the value of such stamp, shall be punished by imprisonment for a period not exceeding six months, or by a fine not exceeding 10 times the value so demanded or accepted, or by both, and that it shall be in the discretion of the court or officer passing the sentence to direct the value of the excess to be refunded out of such fine to any person from whom such excessive consideration may have been accepted.

17. And it is enacted, that any vender or other person who, after any period which

which may have been appointed by the Governor-general in Council for the commencement of the use of new stamps sells any old stamps, shall be punished by a fine not exceeding 100 rupees.

18. And it is enacted, that if any vender refuses or omits to render any accounts required by the provisions of any bond he may have entered into, or to permit the collector of the stamp revenue of the district to inspect his accounts, or to examine the store of stamps in his possession, it shall be lawful for the said collector to proceed against the said vender for the recovery of the value of the balance of stamps standing against the vender in the books of the said collector, or for the recovery of the balance of money standing against the said vender in the said books, in the same manner as collectors of land revenue are authorized by law to proceed against sudder farmers for arrears of revenue.

19. And it is enacted, that any vender who, upon the determination or resignation of his licence, does not, within such reasonable time as shall have been prescribed by the collector of the stamp revenue of the district, make over to some officer duly authorized to receive them accounts of all his transactions in relation to stamps, kept according to the provisions of any bond he may have entered into, together with any stamps remaining, or which ought to be remaining in his hands, and any balance of cash which may be due from him to government on the above-mentioned accounts, shall be liable to a fine not exceeding 500 rupees; provided always, that no vender shall, by the payment of such fine, be exempt from any punishment provided by law for any embezzlement of which he may have been guilty, or from such proceeding as by section 18 of this Act the collector of the stamp revenue of the district is empowered to adopt for the recovery of the value of any stamps or balance of cash remaining in the hands of or standing against such vender.

20. And it is enacted, that upon the death of any vender, his executors or administrators, or in case there be no executor or administrator, any other person in possession of his effects, shall, upon demand being made by a duly authorized officer, make over within a reasonable time to such officer any stamps which the deceased vender may have received and not have issued at the time of his death, and any accounts of the transactions of the deceased vender in relation to stamps which may have been kept according to the provisions of any bond such vender may have entered into, of which stamps and accounts such executor, administrator, or other person may have the possession, or be able to obtain the possession, on pain of a fine not exceeding 500 rupees.

21. And it is enacted, that it shall be lawful for the collector of the stamp revenue of the district, in the cases specified in the three preceding sections, to call upon the surety or sureties of the vender, or any of them, to make good the value of the balance of stamps standing against the vender in the books of the said collector, or the balance of money standing against the said vender in the said books, and on his or their failure to do so, to proceed against all or any of them for the recovery of the value of the balance of stamps, or for the recovery of the balance of money as aforesaid, in the same manner as collectors of land revenue are authorized by law to proceed against the sureties of sudder farmers for arrears of revenue.

22. And it is enacted, that no person not being a vender of stamps, duly appointed, shall sell any stamp unless it has been in an authorized manner obtained for use and not for sale, under pain of a fine not exceeding 100 rupees.

23. And it is enacted, that when any stamp shall have been rendered useless by accident or by the writing of any words with the intention of forming any instrument, it shall be in the discretion of any board or officer authorized by Government in that behalf, to cause to be issued in exchange for the stamp so rendered useless, a stamp of equal value; and the officer or vender issuing such stamp shall write on the back thereof the date of issue, the name of the person to whom it is issued, and his own ordinary signature, on pain of a fine not exceeding 100 rupees.

24. And it is enacted, that any person being in possession of any instrument or writing which is upon a stamp of inferior value to the proper stamp, shall, upon application to any collector of the stamp revenue of a district, be entitled to be furnished with a stamp of the value requisite, under section 4 of this Act, for a copy of the instrument or writing, upon payment of the difference between the value of the stamp with which he is so entitled to be furnished, and that of the

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On Stamps.

stamp on which the instrument or writing is; but he shall not be permitted to take such stamp away from the office of the collector until such copy has been made upon it.

25. And it is enacted, that any person who fraudulently counterfeits any stamp, or who alters any stamp with the intention that it shall pass for a stamp of greater value, or makes or uses any die for either of the above purposes, or who fraudulently issues or exposes for sale any counterfeit stamp, or any stamp altered as above described, or who fraudulently uses any counterfeit stamp, or any stamp altered as aforesaid, shall be punished by imprisonment, with or without hard labour, for a term of not less than two years nor more than seven years.

26. And it is enacted, that if any person shall discover that any instrument or writing in his possession which requires a stamp is upon a counterfeit of a stamp of adequate value, and shall forthwith inform the collector in charge of the stamp revenue of the district in which the counterfeit was issued, and shall prove to the satisfaction of such collector that such counterfeit was purchased from a licensed vender, he shall be entitled to be furnished gratis with a stamp of the value requisite, under section 4 of the Act, for a copy of the instrument or writing, but shall not be permitted to take such stamp away from the office of the collector until such copy has been made upon it.

27. First, And it is enacted, that every offence punishable by this Act, when committed by licensed venders, except the offences punishable by section 25, shall be tried, if such offence be committed within the town of Calcutta, by one of the justices of the peace for the said town; and if such offence be committed without the town of Calcutta, then by such officer as the Governor-general in Council shall appoint for that purpose. Second, And it shall be lawful for the Governor-general of India, in Council, to give such officer as he may appoint for the trial of such offences, all or any of the powers for that purpose.

28. And it is enacted, that all offences punishable by this Act, except the offences punishable by section 25, shall, when committed by any person not a licensed vender, be tried by one of the justices of the peace for the town of Calcutta, if committed within the limits of the town of Calcutta, and if committed beyond those limits, shall be tried by the magistrate or joint magistrate within whose jurisdiction they shall have been committed.

29. And it is enacted, that the offences punishable by section 25, when committed by any person who at the time of committing them shall be subject to the criminal jurisdiction of the Supreme Court established at Calcutta by his Majesty's charter, shall be tried by that court, which shall deal with the said offences as misdemeanors; and if committed by any other person, such offences shall be tried by the session judge of the zillah or city in which they shall have been committed.

30. And it is enacted, that if a person sentenced to any fine under the provisions of this Act, shall not pay the fine to which he shall be sentenced, it shall be lawful for the officer or court who tried him, to commit him to prison until the payment of the fine, or the expiration of a term to be assigned, not exceeding three months, whichever shall take place; and this imprisonment shall be in the civil gaol, except in cases of offences punishable by sections 13 and 16, in which cases it shall be in the criminal gaol.

31. And it is declared, that no provision of this Act, is inapplicable to females by reason of the exclusive use of masculine nouns or pronouns.

32. And it is declared, that throughout this Act, and the Schedules annexed to it, the word "stamp" is used to signify a stamped piece of paper, or other material for writing on, and that by the "value" of a stamp, is meant a sum indicated by words or figures duly impressed upon such piece of paper or other material.

Revised Schedule (A).

Specifying Instruments and Writings which require Stamps, and indicating the Proper Stamps for those Instruments and Writings.

	PROPER STAMP.
	Rs. Ans.
1. Agreement (Ikrar), or any minute or memorandum of an agreement not otherwise provided for in the schedule, whether the same be only evidence of a contract or obligatory upon the party :	
If relating to matters capable of valuation, and with the value stated - - - - - - - - - -	The same stamp as for a bond for the payment of the amount of the value stated.
If for an annual payment, or any periodical payment to be made at shorter periods than a year - - - - -	The same stamp as for a bond for the amount of 10 years' payment, or of the total sum secured if less.
If for the performance of any legal act, or for a purpose not restricted to, nor specifying any amount - - -	An optional stamp ; *see* section 5 of the Act.
Exceptions.	
Agreement for the hire of labour. All agreements made by letter through the public dawk, between merchants and other persons.	
2. Assignments, if not of the nature specified under the heads of Conveyances and Settlements, nor specially exempted :	
In cases where the assignment is of any interest secured by an original deed or instrument, on a stamp of a value less than eight rupees - - - - - - - - - -	The same stamp as the original deed.
In other cases - - - - - - - - - -	8 –

3. Bills of exchange, drafts, promissory notes, hoondies, teeps, burats and other orders and obligations for the payment of money, not being bonds, tumusooks nor instruments or writings bearing the attestation of one or more witnesses, if payable within the territories of the Presidency of Fort William, at sight or on demand, or at any period not exceeding one year after date or sight :	At Sight or Demand, or not exceeding Three Months after Date or Sight.		Exceeding Three Months after Date or Sight, and not exceeding One Year.	
	Rs.	*Ans.*	*Rs.*	*Ans.*
If for a sum of money not exceeding 25 rupees - -	–	1	–	2
Above 25 rupees and not exceeding 50 „ - - -	–	2	–	4
50 „ - ditto - - 100 „ - - -	–	4	–	8
100 „ - ditto - - 200 „ - - -	–	8	–	12
200 „ - ditto - - 400 „ - - -	–	12	1	–
400 „ - ditto - - 800 „ - - -	1	–	1	8
800 „ - ditto - 1,600 „ - - -	1	8	2	–
1,600 „ - ditto - 3,000 „ - - -	2	–	2	8
3,000 „ - ditto - 5,000 „ - - -	2	8	4	–
5,000 „ - ditto - 10,000 „ - - -	4	–	6	–
10,000 „ - ditto - 20,000 „ - - -	6	–	8	–
20,000 „ - ditto - 30,000 „ - - -	8	–	12	–
30,000 „ - ditto - 50,000 „ - - -	12	–	16	–
50,000 „ - ditto - 100,000 „ - - -	16	–	20	–
100,000 „ - - - - - - - - -	20	–	25	–
If payable out of the territories of the Presidency of Fort William, at whatever date - - - - - -	The same stamp as for the same instruments, payable within the territories, at a period not exceeding three months after date or sight.			

(*continued*)

No. 7. On Stamps.

	PROPER STAMP.
4. Any of the instruments described in No. 3, intended to be re-issued - - - - - - - - - - - -	The same stamp as for promissory notes, payable at a period exceeding three months after date or sight.
5. Any of the instruments described in No. 3, payable at a period exceeding one year after date or sight - - - - -	The same stamp as for bonds for the payment of the same amount.

Exemptions.

Bills of exchange or hoondees for any sum of money, if drawn *bonâ fide* from any place distant more than 100 miles from the place where the same are made payable, and not negotiated after acceptance: provided, however, that if any bill or bills of exchange, drawn in any part of the continent of India, and made payable in any part of the territories subject to the Presidency of Fort William, shall be negotiated therein after acceptance, or be in any way transferred after acceptance to a third party, other than the acceptor and the payee of such bill or bills, the exemption shall not hold in respect to any such negotiated bill or bills, unless there be affixed to each bill a copy of the same, executed on the prescribed stamp for such bill.

Foreign Bills of Exchange.—All drafts or orders for the payment of any sum of money on demand, drawn upon any bank, banker or agent residing within 20 miles of the place where such draft or order shall be issued, such place being specified on the face of the draft.

Bills of Sale.—*See* Conveyance and Mortgage.

6. Bonds and tumusooks for the payment of money, whether attested or not, all attested obligations for the payment of money.	*Rs.*	*Ans.*
If for any sum not exceeding 25 rupees - - - -	–	2
Above 25 rupees and not exceeding 50 rupees - - -	–	4
50 „ - ditto - - - 100 „ - - -	–	8
100 „ - ditto - - - 200 „ - - -	1	–
200 „ - ditto - - - 300 „ - - -	2	–
300 „ - ditto - - - 500 „ - - -	4	–
500 „ - ditto - - 1,000 „ - - -	6	–
1,000 „ - ditto - - 2,000 „ - - -	10	–
2,000 „ - ditto - - 3,000 „ - - -	16	–
3,000 „ - ditto - - 5,000 „ - - -	20	–
5,000 „ - ditto - - 10,000 „ - - -	32	–
10,000 „ - ditto - - 20,000 „ - - -	40	–
20,000 „ - ditto - - 50,000 „ - - -	64	–
50,000 „ - ditto - - 75,000 „ - - -	70	–
75,000 „ - ditto - 100,000 „ - - -	80	–
100,000 „ - ditto - 150,000 „ - - -	100	–
150,000 „ - ditto - 200,000 „ - - -	120	–
200,000 „ - - - - - - - -	150	–
And for every further lack of rupees which is exceeded -	100 rs. in addition.	
Thus, for example:—		
Above 300,000 rupees, and not exceeding 400,000 rupees -	250	–
400,000 „ - ditto - - 500,000 „ -	350	–

	PROPER STAMP.
	Rs. Ans.
7. Bonds concerning respondentia and bottomry - - -	The same stamp as for a bond for the payment of the amount insured.
8. Bonds given as security for the transfer of government security, or for the payment of an annuity for a fixed period, or for the delivery or accounting for any matter or thing capable of being valued - - - - - - - - - - -	The same stamp as for a bond for the payment of the amount engaged to be paid or accounted for, or of the value of the thing to be delivered or transferred.
9. Bonds for annuities for an indefinite period, such as life annuities - - - - - - - - - - - -	The same stamp as for a bond for the payment of a sum equal to ten times the yearly payment.
10. Bonds when the amount of the money to be secured is not specified - - - - - - - - - - - -	An optional stamp; *see* sect. 5 of the Act.
When the amount is limited to a certain sum - - -	The same stamp as for a bond for the payment of such limited sum.
11. Bonds for the due execution of an office or work, mochulkas and the like, taken by individuals, and all other bonds not otherwise specially provided for - - - - - - -	An optional stamp; *see* sect. 5 of the Act.
12. Bonds taken as collateral security, with some deed or instrument executed on the stamp prescribed for conveyances, or money bonds, or as security for the performance of any other contract, covenant, or agreement, not being for the payment of money, the transfer of property, or the satisfaction of any pecuniary demand - - - - - - - - -	The same stamp as the deed, instrument, contract, covenant or agreement, if of value not exceeding 8 rupees, otherwise a stamp of 8 rupees.
Exemptions.	
Arbitration bonds.	
For security bonds which may be taken by or by order of any court, collector or other judicial revenue authority, also razeenamahs, soolutnamahs and ruffanamahs, filed in any suit pending in a court of justice - - - - -	*See* Schedule (B.)
13. Charter-parties, or any agreement or contract for the charter of any ship or vessel, or any memorandum, letter or other writing between the captain, master, or owner of any ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods or effects, on board of such ship or vessel - - - - - - - - - -	If the amount payable under the writing exceeds 1,000 rupees, 8 rupees. If the amount does not exceed 1,000 rupees, according to the scale prescribed for bonds for the payment of money.
14. Composition deeds, or other instruments of composition between a debtor and his heirs, or their creditors - - -	If the amount of composition exceeds 1,000 rupees, 8 rupees. If the amount of compensation does not exceed 1,000 rupees, according to the scale prescribed for bonds for the payment of money.
15. Contracts and deeds, if not otherwise specially provided for	As Agreements.
16. Conveyances (kubalas bynamas) or deeds or instruments of any kind or description whatsoever, executed for the sale or transfer, for a consideration, of any lands, tenements, rents, annuities or other property, real or personal, moveable or immoveable, or of any right, title or claim to or upon, or interest in any lands, houses, rents, annuities or other property, that is to say, for or in respect of the principal or only deed, instrument or writing, whereby the property sold shall be conveyed to, or otherwise vested in the purchaser or purchasers, or to some other person, by his or their directions:	
When the purchase or consideration money therein expressed or denoted shall not exceed 50 rupees - -	– 8
Above 50 rupees and not exceeding 100 rupees - -	1 –
100 „ - ditto - - - 200 „ - - -	2 –
200 „ - ditto - - - 500 „ - - -	4 –
500 „ - ditto - - 1,000 „ - - -	8 –
1,000 „ - ditto - - 2,000 „ - - -	12 –

(*continued*)

	PROPER STAMP.
	Rs. *Ans.*
Above 2,000 rupees and not exceeding 3,000 rupees - -	16 –
3,000 „ - ditto - - 5,000 „ - - -	20 –
5,000 „ - ditto - - 8,000 „ - - -	32 –
8,000 „ - ditto - - 12,000 „ - - -	40 –
12,000 „ - ditto - - 20,000 „ - - -	50 –
20,000 „ - ditto - - 30,000 „ - - -	64 –
30,000 „ - ditto - - 50,000 „ - - -	80 –
50,000 „ - ditto - - 100,000 „ - - -	100 –
100,000 „ - - - - - - - - -	150 –
And for every further lack of rupees which is exceeded -	100 in addition.
Thus, for example:	
Above 200,000 rupees and not exceeding 300,000 rupees -	250 –
300,000 „ - - ditto - - 400,000 „ -	350 –

Note.—When of several deeds, instruments or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed. In all cases, however, where there are more deeds than one, every other deed than the principal requires the same stamp as the principal deed, if of value not exceeding eight rupees (which shall be the maximum stamp for collateral deeds), and all such collateral deeds shall specify by their contents which other is the principal deed by which the conveyance has been effected, certifying that it is executed on the proper stamp.

Exemptions.

All transfer of subscription to any of the government loans, or other government securities; also of bank shares.

17. Copartnership, deeds of - - - - - - - - 8 –

18. Copies.—Copy of any deed or instrument, or any part thereof, attested to be a true copy or true extract, and furnished to a party to the same, for the purpose of being given in evidence for the recovery of any sum of money, property, interest or right secured thereby - - - - - - - - The same stamp as required for the original deed, by this schedule.

19. Where such copy or extract may be made for the security or use of any person not being a party to or taking any benefit or interest immediately under the agreement, contract, bond, deed, or other instrument, per sheet - - - - - - – 8

20. Copy or extract of any deed, instrument, schedule, receipt or other matter annexed to any agreement, contract, bond, deed or other instrument, per sheet - - - - - - – 8

21. Copies authenticated of any records, letters, accounts, statements, reports or other writings, furnished to individuals from any of the public officers of government, per sheet - - – 8

For copies of revenue and judicial papers to be given from the courts of justice, revenue kutcherries, &c. - - *See* Schedule (B.)

Exemptions.

Copies made for private use only of any person having the custody of the original instruments, or of his or her attorney or solicitor, and copies of deeds, &c. retained in public offices, on returning the originals.

Copies of papers which public officers are directed by any general regulation to make, require or furnish, for which stamps are not specially required by this schedule.

22. Deeds of any kind not otherwise particularized in this schedule - - - - - - - - - - - As Agreements.

23. Exchanges.—Any deed or instrument whereby any real property shall be conveyed or surrendered in exchange for other property:

If no sum of money shall be paid or agreed to be paid for equality of exchange - - - - - - - 8 –

	PROPER STAMP.
If any sum of money be paid or agreed to be paid for equality of exchange	*Rs. Ans.* A stamp of value exceeding by 8 rupees the stamp required for a conveyance in a case where the consideration is equal to the sum paid or agreed to be paid for equality of exchange.
Gift and dower, deeds of, whether to take effect on the instant, or at a further period, determinate or indeterminate	The same stamp as for deeds of settlements.
24. Leases.—Any lease made in perpetuity, or for a term of years, or period determinable within one or more lives, or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent	The same stamp as for a conveyance or deed of sale for a sum of the amount of such consideration.

25. Any lease of lands, houses or other real property, at a rent, without any payment of any sum of money by way of fine or premium:

	When the Lease is for a Period not exceeding One Year.		When the Lease is for a Period exceeding One Year.	
	Rs.	*Ans.*	*Rs.*	*Ans.*
Where the rent calculated for a whole year shall exceed 12 rupees, but not exceed 24 rupees	–	4	–	8
Exceeding 24 rupees but not exceeding 50 rupees	–	8	–	12
50 „ ditto 100 „	–	12	1	–
100 „ ditto 250 „	1	–	2	–
250 „ ditto 500 „	2	–	4	–
500 „ ditto 1,000 „	4	–	8	–
1,000 „ ditto 2,000 „	8	–	12	–
2,000 „ ditto 4,000 „	12	–	16	–
4,000 „ ditto 6,000 „	16	–	20	–
6,000 „ ditto 10,000 „	20	–	32	–
10,000 „ ditto 50,000 „	32	–	64	–
Above 50,000 „	64	–	80	–

26. Any lease of lands, houses or other real property, at a rent for an indefinite term, and without any payment of any sum of money by way of fine or premium	The same stamp as for a lease for a period exceeding one year.
27. Any lease of lands, houses or other real property, stipulating for a rent, and granted in consideration of a fine or premium	A stamp of value equal to the joint values of the stamps for a conveyance, in consideration of the fine, and a lease for the rent.
28. The counterpart of any lease, *i. e.* the kubooleat or the teak	The same stamp as for the lease.

Exemptions.

All leases, pottahs and kubooleats executed and exchanged with ryots and other actual cultivators of the soil, and all security bonds executed as part of the same transactions.

29. Letters, or powers of attorney, or commission, or factory, in the nature thereof, mooktearnamahs, &c., viz.:	
For the performance of any special act or acts, or of the acts connected with any one particular suit, case or transaction	– 8
General, *i. e.* not restricted as above	4 –
For wakulutnamahs, mookturnamahs and other powers required to be filed for the conduct of suits, regular or summary, or of proceedings of any kind pending before the courts of judicature or before the revenue authorities	*See* Schedule (B.)
30. Letters of licence from creditors or debtors	8 –

(*continued*)

	PROPER STAMP.
	Rs. Ans.
31. Mortgages.—Any deed of mortgage or conditional sale, kut ku bulah, bye bil wufa, bhoy bhunduck, or the like, with or without possession given, of or for any lands, estates or property, real or personal, intended as a security for money due or to be lent thereupon: also any deed or contract accompanied with a deposit of title deeds to any property, where the same may be made as a security for payment of money due or lent at the time - - - - - - - - -	The same stamp as for a bond for the payment of the amount due or lent.
32. Deeds of mortgage, or the like, given as security for the transfer of government securities, as for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued - - -	The same stamp as for a bond for the payment of the total amount assured, or for the *boná fide* value.
33. Deeds of mortgage given for the security of annuities for an indefinite period, such as life annuities - - - -	The same stamp as for ten times the annual payment.
Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum - - - -	The same stamp as for deeds of mortgage, or such limited sum.
Where the total amount secured by the mortgage is unlimited - - - - - - - - - - -	An optional stamp; *see* sect. 5 of the Act.
Where a bond may have been already taken for the amount secured, or where from any other cause the mortgage shall act merely as a collateral security to some other transaction in which an instrument requiring a stamp has been executed - - - - - - - - -	The same stamp as for the bond or other instruments, if of value not exceeding 8 rupees, otherwise a stamp of 8 rupees.
Where there are more deeds than one required to execute the mortgage in the manner desired by the parties, then for every other deed than the principal deed - - -	The same stamp as for the principal deed, if of value not exceeding 8 rupees; in other cases a stamp of 8 rupees.
34. Mortgages, assignments or acknowledgments granted to the treasurer or other officer of the Bank of Bengal, on account of that bank, or to any private banker or agent, for loans or advances made on the deposit of government securities, bullion, plate, jewels or other goods - - - - - - -	The same stamps as for promissory notes.
35. Partitions by private agreement of heirs and co-sharers, or made by public officers, of estates or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, when a sharer's portion exceeds in value 800 rupees, then for every such sharer's copy of the deed of partition - - - - - - - - - - -	8 –
When the sharer's portion does not exceed 800 rupees -	1 –
Then if not exceeding 100 rupees - - - - - -	– 8
Exceeding 100 rupees and not exceeding 200 rupees - -	1 –
200 „ - - ditto - - 400 „ - -	2 –
400 „ - - ditto - - 600 „ - -	4 –
600 „ - - ditto - - 800 „ - -	6 –
When the subject of the partition, consisting either wholly or in part of other property than money, any money, not being part of such subject, is paid, or agreed to be paid, for the purpose of compensating any difference from just proportion in the partition actually made of that subject	A stamp of value equal to the joint values of the stamp which would have been required had the subject of partition been actually divided with the just proportion, and of the stamp for a conveyance or deed of sale for a sum equal to the amount so paid, or agreed to be paid, for the purpose of compensating the difference therefrom.
36. Policy of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon any event depending upon any life or lives:	
Where the sum insured shall not exceed 5,000 rupees -	4 –
Exceeding 5,000 rupees and not exceeding 10,000 rupees -	8 –
10,000 „ - - ditto - - 20,000 „ -	12 –
20,000 „ - - ditto - - 50,000 „ -	16 –
Above 50,000 - - - - - - - -	20 –

	PROPER STAMP.
	Rs. Ans.
37. Policy of insurance of any ship, vessel, sloop, lighter, boat, or the like, or of any goods or property on board, or upon the freight of any ship, vessel, sloop, lighter, boat, or the like, or upon any other interest relating thereto, or upon any voyage where the premium shall not exceed two per cent. on the sum insured, if the whole sum insured shall not exceed 1,000 rupees	– 8
If the sum insured exceed 1,000 rupees, then for every 1,000 rupees, and also for any fractional part of 1,000 rupees whereof the same shall consist	– 8
Where the premium shall exceed two per cent. on the sum insured, if the whole sum shall not exceed 1,000 rupees	1 –
If the sum insured exceeds 1,000 rupees, then for every 1,000 rupees, and also for any fractional part of 1,000 rupees whereof the same shall consist	1 –
Promissory notes	*See* Bills of Exchange.
38. Promissory notes for the payment of any sum by instalments, *i. e.* kisthundies, or for the payment of several sums at different dates, so that the whole of the money to be paid shall be definite and certain	The same stamp as for a bond for the payment of the whole amount.
39. Receipts for money deposited in any bank, or in the hands of any banker or agent, if the same shall stipulate for the payment of interest:	
When the receipt contains nothing whereby it appears that the money deposited is not liable to be withdrawn within three months from the date of the deposit:	
If for a sum of money not exceeding 25 rupees	– 1
Above 25 rupees, and not exceeding 50 „	– 2
50 „ ditto 100 „	– 4
100 „ ditto 200 „	– 8
200 „ ditto 400 „	– 12
400 „ ditto 800 „	1 –
800 „ ditto 1,600 „	1 8
1,600 „ ditto 3,000 „	2 –
3,000 „ ditto 5,000 „	2 8
5,000 „ ditto 10,000 „	4 –
10,000 „ ditto 20,000 „	6 –
20,000 „ ditto 30,000 „	8 –
30,000 „ ditto 50,000 „	12 –
50,000 „ ditto 100,000 „	16 –
100,000 „	20 –
When it shall appear from the terms of the receipt that the money is not liable to be withdrawn within three months:	
If for a sum of money not exceeding 25 rupees	– 2
Above 25 rupees, and not exceeding 50 „	– 4
50 „ ditto 100 „	– 8
100 „ ditto 200 „	– 12
200 „ ditto 400 „	1 –
400 „ ditto 800 „	1 8
800 „ ditto 1,600 „	2 –
1,600 „ ditto 3,000 „	2 8
3,000 „ ditto 5,000 „	4 –
5,000 „ ditto 10,000 „	6 –
10,000 „ ditto 20,000 „	8 –
20,000 „ ditto 30,000 „	12 –
30,000 „ ditto 50,000 „	16 –
50,000 „ ditto 100,000 „	20 –
100,000 „	25 –

(*continued*)

No. 7.
On Stamps.

	PROPER STAMP.
	Rs. *Ans.*
When it shall appear from the terms of the receipt that the money is not liable to be withdrawn within one year:	
If for any sum not exceeding 25 rupees - - -	– 2
Above 25 rupees, and not exceeding 50 rupees - -	– 4
50 „ - ditto - - 100 „ - -	– 8
100 „ - ditto - - 200 „ - -	1 –
200 „ - ditto - - 300 „ - -	2 –
300 „ - ditto - - 500 „ - -	4 –
500 „ - ditto - - 1,000 „ - -	6 –
1,000 „ - ditto - - 2,000 „ - -	10 –
2,000 „ - ditto - - 3,000 „ - -	16 –
3,000 „ - ditto - - 5,000 „ - -	20 –
5,000 „ - ditto - - 10,000 „ - -	32 –
10,000 „ - ditto - - 20,000 „ - -	40 –
20,000 „ - ditto - - 50,000 „ - -	64 –
50,000 „ - ditto - - 75,000 „ - -	70 –
75,000 „ - ditto - 100,000 „ - -	80 –
100,000 „ - ditto - 150,000 „ - -	100 –
150,000 „ - ditto - 200,000 „ - -	120 –
200,000 „ - - - - - - - -	200 –
And for every further lack which is exceeded - -	100 in addition.
40. Receipts or discharges given for any or upon the payment of any sum of money:	
Exceeding 50 rupees, and not exceeding 100 rupees -	– 2
100 „ - ditto - - 200 „ - -	– 4
200 „ - ditto - - 500 „ - -	– 8
500 „ - ditto - - 1,000 „ - -	– 12
1,000 „ - ditto - - 2,000 „ - -	1 –
2,000 „ - ditto - - 3,000 „ - -	1 8
3,000 „ - ditto - - 5,000 „ - -	2 –
5,000 „ - ditto - - 8,000 „ - -	2 8
Above 8,000 - - - - - - - -	4 –
Also, for a receipt in full of all demands - - - -	4 –
And any instrument, note, memorandum, or writing given upon the payment of money, whereby any money, debt, or demand, or the part thereof therein specified, shall be expressed or acknowledged to have been paid, settled, or otherwise satisfied, shall be deemed to be a receipt for the amount so declared to be paid or satisfied; and if any such instrument or other writing shall contain a general acknowledgment of the settlement of debt accounts or other demands, without specifying the amount thereof, such instrument or writing shall be deemed to be a receipt in full of all demands.	
And if payment be made by delivery of a bill or bills of exchange, draft or drafts, promissory note or notes, or the like securities of money, the receipt or acknowledgment given thereupon is a receipt within the meaning of this schedule.	
Exemptions.	
Receipts or discharges for the rent of land granted by any zemindar, talookdar, farmer, or other malgoozar, or by any holder or proprietor of land held exempt from the payment of revenue, or by any Mofussil talookdar, ijaradar, kutkenadar, or other leaseholder, or by the gomastah, factor, or other agent of such zemindar or other person aforesaid to a ryot, or other actual cultivator, for the rent of land tilled by him.	

	PROPER STAMP.
	Rs. Ans.
Receipts and discharges given for the purchase-money of any government securities or shares of the Bank of Bengal.	
Receipts and discharges given for money deposited in any bank, or with any agent, to be accounted for on demand, provided no interest be stipulated as payable thereon.	
Receipts or discharges written upon promissory notes, bills of exchange, drafts, or orders for the payment of money.	
Receipts and discharges given to gomastahs and others, being servants of the party giving the receipts, in acknowledgment of the performance of service, or of the said servants having rendered accounts of trusts and monies committed to them.	
Letters by the post, acknowledging the arrival of any promissory notes, bills of exchange, or other securities for money.	
Receipts or discharges written upon or contained in any bond, deed of mortgage, or other security, or any deed of conveyance, settlement, or other deed or instrument whatever acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured.	
41. Settlements, marriage settlements, &c.; viz. any deed or instrument whereby any sum or sums of money, or any government securities, or other property, real or personal, shall be settled, or agreed to be settled, upon or for the benefit of any person or persons in any manner whatsoever - - - -	The same stamp as for a bond for the payment of the amount or value settled or agreed to be settled; or, in cases in which the value shall be indeterminate, an optional stamp. *See* sect. 5 of the Act.
Exemptions.	
Wills, testaments, and the like, together with deeds merely declaratory of trust, pursuant to any previous settlement deed, or wills.	
General Exemption, and Rule.	
Deeds, instruments, and writings of any kind, in which Government, or any Board, commission, court, or public officer, may in a public capacity be a party, do not require stamps.	
Note.—The foregoing exemption does not extend to deeds, instruments, and writings executed to or by the Court of Wards, local agents, or officers acting under their authority; neither does it extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees or orders of court, in which cases the purchasers shall be required to pay, along with the purchase-money, the price of the requisite stamp, or else provide such stamp, and shall receive from the officer conducting the sale a deed of sale (byenamahs), executed on the proper stamp.	
General Rule.	
If any instrument or writing specified in this schedule (excepting copies and extracts provided for in Nos. 19, 20, and 21), shall be on more than one sheet or piece of paper, or other material, it shall suffice that one sheet be a stamp, provided that it be of the requisite value, and that the signatures or seals of the parties and witnesses be thereupon.	

Sep. India Cons.
20 Oct. 1837.
No. 29.

DRAFT OF THE ACT.

OBSERVATIONS and SUGGESTIONS of the Board of Customs, Salt, and Opium.	REMARKS by the Indian Law Commissioners.
(*a*) Regulation XII. of 1826 was re-enacted on the 14th June 1827, and registered on the 12th July 1827. Query, is it necessary to notice this last-mentioned date in the new Act?	The Commissioners have no information on this point, except the notice in the Board's paper; assuming that to be correct, perhaps it may be expedient to insert after 1826, the words, "which was re-enacted on the 4th June 1827, and registered in the Supreme Court of Judicature on the 12th July 1827."
(*b*) Is it to be inferred from this, that deeds, &c., required by Regulation XII. of 1826, and X. of 1829, to be upon stamped paper, but which are executed upon unstamped paper, shall be stamped under the provisions or otherwise brought under the penalties prescribed, and dealt with by those Regulations? In the event of a paper which ought to have been stamped under Regulation XII. of 1826, but which is not stamped, coming into the possession of the collector of Calcutta stamps, is it intended that the department shall prosecute in the Supreme Court for the recovery of the penalties prescribed by that law?	The intention was as is supposed by the Board; and the Commissioners, after further consideration, see no reason to depart from it.
(*c*) Do the words "territories subject to the Presidency of Fort William," include Calcutta? It is the wording of Regulation X. of 1829 (preamble), which did not include Calcutta. In Regulation XII. of 1826, the provinces subordinate to this presidency are distinctly separated from the town of Calcutta. Might not the wording run thus: "If one or more of the parties thereto be at the time of executing it within the limits of the territories composing or forming the Presidency of Fort William."	The Commissioners think that the words quoted correctly described what they were meant to designate, which it is scarcely necessary to add was the whole of the territories, including the town of Calcutta. In order however to obviate the objection brought forward by the Board, founded on the different sense in which nearly the same terms were employed in Regulation X. of 1829, the Commissioners have altered the expression to "the territories subject to the government of the Presidency of Fort William, in Bengal," which they hope cannot be misconstrued.
(*d*) It is presumed that there is no intention to prescribe the size of the sheet (or stamp) upon which bonds, settlements, mortgages, and the instruments generally which are included in Schedule (A.) are to be engrossed, but merely the size of the stamp upon which copies of revenue and judicial proceedings, &c. are to be taken, and the same for petitions and records of office.	The government will no doubt give such attention as is due to the suggestion of the Board on this head. It is sufficient for the Commissioners to observe that, under the Act, both as originally drawn, and as now revised, it rests entirely with the executive government to determine whether a particular size shall be prescribed for the stamp required for any description of writing.
(*e*) "Promissory note." Should not post-bills be added? The absence of the term may raise a question in the courts in the event of one of those instruments, viz., post-bills, being produced in evidence*.	The Commissioners have adopted this suggestion.
(*f*) A	The

* *Vide* Letter to Collector of Calcutta Stamps, of 30 July 1832.

(*f*) A section analogous to section 5, appears necessary to enable government to exempt from duty any deed or instrument, or duplicate thereof; under the existing Regulations, duplicates and triplicates, of deeds and instruments, liable to *ad valorem* duties (not those liable to fixed duties) have been exempted from duty*.

The Commissioners observe, that by this Act, the exclusion of unstamped documents from the courts of civil judicature is the means mainly relied on for the realization of the stamp revenue; and as copies of deeds or instruments furnished to parties for the purpose of being given in evidence, are required to be written on the same stamps as the originals, they do not see why duplicates and triplicates of any writings should be exempted. Besides, it is only when originals are not forthcoming that there is any occasion to make use of duplicates or triplicates; and when the originals are not forthcoming, it cannot be known that they are on stamps. The exemption therefore of duplicates and triplicates from stamp duty, seems evidently likely to lead to great abuses, and much loss of revenue: any advantage however, which on further explanation may be found likely to arise from the adoption of the Board's suggestion, will no doubt be duly considered by the government.

(*g*) For the convenience of parties purchasing stamps, venders are sometimes in the habit of writing their names on the face of the stamp, high up towards the margin of the papers. This enables the purchaser to continue the engrossment on the reverse side of the sheet without writing over the vender's indorsement. Perhaps the law might prescribe that the vender shall write "on each stamp," leaving out the "back of it."

The Commissioners do not think any alteration in the draft necessary in this respect. The vender's indorsement, if made at the bottom of the reverse side of the stamp, will interfere as little with the engrossment as if made near the margin on the face of the stamp.

(*h*) The Calcutta Regulation does not provide for the writing of the purchaser's name, in fact it affords but little security, because a party purchasing a stamp with a fraudulent design, would give a fictitious name. Besides, stamps which have been purchased are transferable†, and the party who makes the transfer is not required to note to whom he hands the paper. The English law has, the Board believe, no rule prescribing either indorsement by vender, names of receiver, or date of sale. The date, however, may be useful, though not to any very valuable extent; the majority of the Mofussil judges, who were consulted on the subject, wished it to be retained.

Although the check upon forgery and other dishonest practices afforded by the indorsement of the purchaser's name and date of sale is not a perfect one, the Commissioners on the whole are satisfied that it is attended with advantage: and as that advantage, whatever it's amount, is obtained with little or no inconvenience, they think it desirable that the provision should be allowed to stand as it is.

(*i*) *Vide* remarks attached to letters (*g*) and (*h*).

See observations on ditto ditto.

(*j*) The

* Orders of Government, dated 26 July 1827, for policies of insurance. Orders of Government, dated 15 February 1831.

† These transfers are legal under the provisions, both of the Calcutta and Mofussil Regulations.

(*j*) The word "and" appears to be erroneously used for "or."

In section 14, imprisonment or fine is prescribed for the offence therein provided for.

Altered accordingly.

(*k*) Is the imprisonment to take place in the civil or criminal gaol? If in the latter, then with or without labour?

See section 27 of Revised Draft, and the remark thereon at (*a i*).

(*l*) It is presumed that this section is meant to meet the possibility of a vender gambling with his stamp store; that is to say, selling the stamps at low prices to raise money on an emergency, and taking his chance of being able to settle with the collector when the day of settlement arrives. But against this contingency a provision appears to be available without the aid of law, if the collector takes proper security; if he does take proper security, the vender may perhaps be left either to sell his stamps at a lower rate, or to give them away; if he does not take any proper security, then he is himself responsible to government.

The Board have misapprehended the object of this section. If the vender demands or accepts for a stamp any consideration other than the value of it, in such currency as he is authorized to receive, it is probable that his purpose is to obtain more than that value. Yet it may often be impossible to prove that what he so demands or accepts really is more. The Commissioners therefore thought it necessary to prohibit him, under a penalty, from demanding or accepting any consideration other than the value in such authorized currency.

(*m*) It seems necessary to specify the gaol, whether civil or criminal.

See section 27 of the Revised Draft, and the remarks thereon at (*a i*).

(*n*) Would it not be preferable to substitute for "within a reasonable time," "a time to be prescribed by the officer in charge of the stamp revenue"?

A slight alteration has been made in consequence of the Board's suggestion.

(*o*) From the use of the word "district," it might be inferred, that this section is intended to be confined to the zillahs; might it not be preferable to use the terms "collector or other officer in charge of the stamp revenue," without adding the words "of the district?"

This objection is obviated by the terms of section 10 of the Revised Draft.

(*p*) Query, insert "or which ought by account to be remaining."

A slight alteration has been made in consequence of the Board's suggestion.

(*q*) Query, "Within a period to be prescribed by the said officer."

The Commissioners do not think that the alteration suggested in this place would be an improvement.

(*r*) Query, insert "or duly accounted for."

This addition appears to the Commissioners to be unnecessary.

(*s*) A separate section appears to be required, enacting that the security of a deceased vender shall be responsible for such amount of cash as shall appear due from the said vender to Government, for stamps sold up to the period of his decease and not duly accounted for to the collector; his executors appear, under section 17 of the draft, to be responsible only for accounts, and for stamped paper which has not been issued.

This suggestion appears to have been offered under a misapprehension, as no provision can be required in the proposed law to render a security answerable for the obligations he may have come under by his bond; but as the Act did not, on further consideration, appear to the Commissioners to provide sufficiently for a summary process against the sureties of a vender, for the recovery of balances of cash, or of the value of stamps unaccounted for, they have added the section now standing as section 21.

(*t*) Query, insert "within a period to be prescribed by the collector or other officer in charge of the stamp revenue."

The Commissioners do not think it advisable to adopt this suggestion.

(*u*) Query,

See

(*u*) Query, to omit the words "of the district."	*See* remark at (*a*).
(*v*) Query, insert "or all or any of his sureties."	*See* the new section, numbered 21.
(*w*) Query, insert "or against the vender and his surety, or sureties jointly."	Ditto.
(*x*) Query, insert of "land revenue."	Adopted.
(*y*) Would it not be preferable to insert this section prior to section 16?	The Commissioners have altered the position of this section, according to the Board's suggestion.
(*z*) Our present law provides an exchange in certain cases, where instruments, although complete, that is to say with the signatures attached, are not brought into use.*	The Commissioners are of opinion that it would be inexpedient to give any person a right to the exchange in the cases adverted to by the Board. The Government will always have it in their power to authorize any officer either to grant such exchanges under such rule as they may think fit, or to receive applications for the purpose, and refer them specially for consideration.
(*a a*) Query, insert "or stamps."†	The Commissioners think it sufficient to confine the exchange to a stamp of equal value.
(*a b*) *Vide* observations at letters (*g*) and (*h*.)	*See* remarks at these letters.
(*a c*) A provision appears requisite to allow parties to bring or send their own materials to be stamped, in the cases provided for in section 20 of the draft, and all others; *vide* section 7, Regulation XII. of 1826, and section 11, Regulation X. of 1829. Policies of insurance must necessarily be supplied by parties taking the stamps; the stamps upon them are of various amounts, not to be provided, but by the use of two, and often three dies.	*See* the observations at the end of the paper on the 2d clause of para. 14 of the Board's letter.
(*a d*) Query, insert "town or."	*See* remark at .
(*a e*) Might not this section precede section 21, or follow section 22; standing as it does, it disconnects two sections having reference to each other; perhaps section 23 should come first, then section 21 next, and section 22 last.	These sections have been transposed to obviate the objection brought forward by the Board.
(*a f*) Query, insert "who shall alter the value impressed on any government stamp." It is a very common practice to alter the word "anna" in a piece of stamped paper to "rupee," and although this alteration cannot touch the water-mark, yet it helps to impose upon the peasants with little reading, who frequently purchase stamps.	This section has been altered in consequence of the Board's suggestion.
(*a g*) Query,	*See*

* Clause 2d, sect. 10, Reg. XII. of 1826. Clause 1st, sect. 12, Reg. X. of 1829.
† As for a stamp of 100 rupees, ten stamps to be given of 10 rupees each.

No. 7.
On Stamps.

(*a g*) Query, insert "proper." Is it not possible that the description of receipt here contemplated, which is an acquittance or discharge, may be confounded with receipts granted by banker and agents for deposits of money?

See remarks at (*a h*); instead of attempting to draw the distinction pointed at by the Board, between two descriptions of receipts, the Commissioners have endeavoured by the insertion of the words "unless it be otherwise" agreed on by the parties, to make the provisions as relating to all kinds of receipts unobjectionable.

(*a h*) Query, might it not be preferable that the section should run thus: "It shall be lawful for the party to whom the receipt is to be given, to refuse the payment of the demand until a signed receipt, on a proper stamp, shall be presented to him."

A party making payment under section 24 of the draft, may deduct the amount of a stamp and yet not provide one, and even if he did, he could not compel the party receiving payment to sign it.

The Commissioners on further consideration, are inclined to think that it will be sufficient to declare by which party the expense of providing the stamp shall be borne in these cases; the interest of the party to whom the money is due, and who will not generally obtain payment until he has prepared the proper receipt, will be the best security for the stamp revenue.

(*a i*) If it is intended to confer this power upon any but a judicial authority, will it not be necessary to provide how the decision of the "officers" vested with such powers is to be carried into effect; as, for instance, no court, the Board imagine, would imprison on a collector's warrant or adjudication in a stamp case, if not provided for by law, as in section 20, Regulation X. of 1829. It is provided in section 26 of the draft that the collector shall commit to prison, but he has no prison of his own, and it may be doubtful whether an officer having a gaol, would allow him to commit to that gaol, unless the law so provided. There can be no doubt but that the gaoler of the Calcutta gaol would refuse to receive a prisoner committed on a warrant or judgment of the collector of Calcutta: in the new Customs' Act, where imprisonment in commutation of fine forms part of a penalty, we have been obliged to commit the adjudication of the case to the justices of the peace.

Further, it does not appear that the collector has any power to arrest in pursuance of his own warrant (supposing him to pass sentence under section 26), even although a gaol was provided for the confinement of the prisoner.

The Commissioners have added clause 2, section 27 (Revised Draft) at the Board's suggestion. They are of opinion, that as regards Calcutta it will be advisable for the present to give this power only to such authority as is already competent to administer oaths, and perform other judicial practices necessary to the enforcement of the penalties; and clause 1st has been altered accordingly. With reference to the Board's observation at (*k*) and (*m*), it may be remarked that under the terms of section 27 (of Revised Draft) persons sentenced to imprisonment for offences punishable by sections 13 and 16 of the Revised Act, will be confined in the criminal gaol.

(*a j*) Query, in what gaol? Under the present law, parties guilty of extortion are liable, under clause 9, section 10, Regulation X. of 1829 (construed in connexion with section 20 of the same Regulation), to imprisonment in the criminal gaol.

The Commissioners consider the civil gaol the appropriate place of confinement for persons sentenced to a term of imprisonment in default of payment of a fine, except in cases of offences punishable under sections 13 and 16 of the Revised Act.

(*a k*) Query, insert, "and the schedules annexed to it."

This suggestion has been adopted.

Extract from the Board's Letter, dated 27th July 1836.

Para. 13. I am further directed by the Board to submit whether there are not certain provisions of the existing Regulations omitted in the draft of the Act, which it may be desirable to reconsider, if the omissions are advisedly made, or to rectify if they have been made undesignedly.

Para. 14. The following are the provisions adverted to, and which it may be thought desirable to add on further consideration.

A provision for affixing two or more stamps, to denote the value chargeable on any single piece of paper, &c.; *vide* clause 2, section 5, Regulation XII. 1826, and clause 2, sect. 6, Regulation X. 1829. This is constantly requisite for policies of insurance, upon which rates vary so materially with reference to the amount insured, and the premium, that we have no single stamp of the proper value.

The provisions here suggested appear to the Commissioners to be unnecessary; section 3 of Act leaving it entirely to the Executive Government to make the requisite arrangements for such objects.

A provision for stamping materials belonging to individuals; *vide* section 7, Regulation XII. of 1826, and section 11, Regulation X. of 1829. This is absolutely indispensable for Calcutta, where instruments are prepared on parchment, and documents are constantly engrossed, prior to being stamped.

A provision to allow discount when parties supply materials, and require stamps to the extent of upwards of 500 rupees, (*vide* clause 4, section 7, Regulation XII. 1826, and clause 4, section 11, Regulation X. 1827); also to allow discount to wholesale purchasers in cases when parties purchase stamps to the same extent of more than 500 rupees.

These provisions the Commissioners advisedly omitted, as being, in their opinion, objectionable. There is, however, nothing to hinder the Executive Government from adopting substantially the mode of proceeding for the supply of stamps to the public which these provisions contemplate, should the Government think it proper to do so.

A provision empowering the Government and the Board to remit fines; *vide* clause 4, section 11, Regulation XII. 1826, and section 16, Regulation X. 1829.

The Commissioners regard the power of remitting fines as being inherent in the Government, and therefore do not consider any provision necessary on the subject.

A provision imposing penalties on individuals, agents, counsel, attornies, and mooktears, for filing or exhibiting unstamped deeds, &c. in any court or office; *vide* clause 1, section 12, Regulation XII. of 1826, and clause 1, section 18, Regulation X. of 1829.

This provision the Commissioners likewise consider unnecessary. It is the business of the officers of the courts and cutcherries to take care that documents requiring stamps are not filed, or officially exhibited, unless either on the prescribed stamps, or accompanied in the manner described in section 4 of the Revised Draft, with a copy on a stamp of ten times the value of the prescribed stamp.

A provision

See

No. 7.
On Stamps.

A provision giving the power to summon witnesses and administer oaths to officers, appointed under section 25 of the draft; *vide* section 15, Regulation XII. 1826, and section 19, Regulation X. 1829. False depositions given before officers, appointed under section 25 of the Act, to be deemed perjury; and persons convicted of the same to incur the penalties provided for that offence by law.

See section 27 of the Revised Draft of the Act, and the remark at (*a i*).

(signed) *J. P. Grant*,
Officiating Secretary.

Schedule (A.)

Sep. India Cons.
20 Oct. 1837.
No. 30.

Observations and Suggestions of the Board of Customs, Salt, and Opium, on the Draft of Schedule (A.)	Remarks by the Indian Law Commissioners.
Query, would it not be preferable thus: "If for the payment of any sum periodically or by instalments;" periodical payments may be made without their being either monthly or annual.	An alteration has been made in the draft, to meet the Board's objection.
(*Ab*) Extract from the Board's reply:	Extract from the Letter to the Board:
Para. 4. The Board have never been called upon to put any construction on the meaning or intent of the provision adverted to, neither are they very clear as to the object of it. They were not vested with the control of the Stamp Department when the Regulations were framed, and were of course not consulted in framing them. They believe the rule is analogous to one in operation under the British stamp law, and they presume the object to have been not to burthen parties with the stamp tax as well as with postage. But they perceive no reason why the limitation, either as to the parties to the agreement being merchants or otherwise, or as to distance, should be retained; and they recommend that the exemption, if it stands at all, should stand thus: "Agreements made by letter through the public dawk."	Para. 5. It does not clearly appear whether this exemption, which, as the draft now stands, is copied into it from the schedule of Regulation X. of 1829, is intended to apply only to agreements between merchants on the one part, and persons not merchants on the other, or also to either of these two other descriptions of agreements, namely, agreements in which both parties are merchants, and agreements in which neither of the parties are merchants. In the schedule to Regulation XII. 1826, the corresponding provision differs only inasmuch as it restricts the exemption to agreements made between persons residing 40 miles from each other. The Commissioners wish to be informed what construction of this exemption has been observed in practice, and whether any reason occurs to the Board why any qualification as to the descriptions of persons contracting should be retained; likewise whether it would be expedient to adopt the limitation in regard to the residence of the parties prescribed in the Calcutta schedule, or, preserving the principle of that limitation, to fix a less distance for the purpose of it. *Remarks.*—The doubt which occurred to the Commissioners, as to the construction of this exemption, has not been cleared up by the observations of the Board. The Board, indeed, are unable to furnish any information in regard either to the construction adopted in practice, or to the object of the provision. On the latter point they offer a conjecture, which does not appear to the Commissioners to be a probable one, nor do the Commissioners think it advisable to adopt the alteration suggested by the Board, as they fear that an exemption couched

couched in such general terms would afford an opening to extensive evasions of stamp duties.

On the whole, the Commissioners are of opinion that this point ought to be cleared up by further inquiry, and it seems to them that the duty of making that inquiry may most appropriately be imposed on the Board of Customs.

(*B b*) Extract from the Board's reply:

Para. 5. The Board consider it desirable to retain the number it provides for reconveyances of transfers, of mortgages, of bonds, policies of insurance, &c., which are not provided for under the head of Conveyance; but the duty might be regulated in the last rule at No. 35, viz. by affixing the same stamp as in the original deed or instrument, if of a value not exceeding eight rupees; in other cases a stamp of eight rupees.

(*d*) Perhaps better as it stands just above, "The same stamp as for the instruments payable," &c. There are many instruments mentioned in No. 3.

(*e*) Query, "Any of the instruments described in No. 3, payable at a period exceeding one year after date or sight." This appears more specific than the entry 5, as it stands in the Draft Schedule.

(*f*) Promissory notes and orders payable by instalments, might perhaps be entered here, by transferring No. 40, and by inserting at the heading above, No. 40, "Promissory note, whether in the form of bank note, bank post bills, or otherwise. *See* Bills of Exchange"

Extract from the Letter to the Board:

Para. 6. This provision has been adopted from the Calcutta schedule, but the Commissioners are doubtful as to the necessity of retaining it; or if it be retained, of the propriety of imposing a uniform stamp of eight rupees on such transactions.

Remarks.—The proposed alteration has been made in this number.

As it is not clear that some of the instruments mentioned in No. 3 may not be such as can be payable at a period exceeding three months after date or sight, the Commissioners prefer the present wording.

Adopted.

It does not appear to the Commissioners that any advantage would be obtained by the alteration of arrangement here suggested.

(*C g*) Extract from the Board's reply:

Para. 6. There is nothing on the Board's record to establish the exact signification which has been considered to attach to the terms "Foreign bills;" indeed, it is singular how very rarely the meaning or intent of entries in the Mofussil Regulation have been made the subject of reference, while in Calcutta the entries have escaped discussion, because the Regulation has been nearly a dead letter. "Foreign bills," however, has been generally understood to signify bills drawn upon any place not on the continent of India, and bills drawn from any place not on the continent of India. There appears to be no good reason why such bills should only receive the benefit of the exemption when drawn in sets.

Para. 7. It occurs to the Board that the exemption, "Foreign bills of exchange," had better have a separate place after the proviso which immediately follows the first exemption to No. 5, in the Draft Schedule (A.), inasmuch as that whether foreign bills are negotiated or not, after acceptance, they are not liable to any stamp duty.

Extract from the Letter to the Board:

Para. 7. The Commissioners request to be informed of the exact signification of the terms "Foreign bills," as here used, and whether there is any good reason for confining the exemption to such foreign bills as are drawn in sets.

Remarks.—The words "drawn in sets" have been struck out in consequence of the Board's opinion. The Commissioners remark, however, with reference to the Board's explanation of the general acceptation of the terms "Foreign bills," that under that definition, bills drawn on or from Penang or Singapore, are "foreign bills," although those settlements are parts of the Presidency of Bengal.

The Commissioners have adopted this suggestion.

(*h*) May

The

No. 7.
On Stamps.

(*h*) May perhaps be included in the general exemptions; indeed it falls naturally under that head, Government being a party to that transaction.

The Commissioners have adopted this suggestion.

(*i*) The term "agent" in this place has given rise to a question, owing to the signification generally attached to that word in Bengal. Might not "person or persons" be substituted?

The Board have not explained the precise nature of the objection to the use of the word "agent;" and although the Commissioners admit that the term is rather vague, they fear the words "person or persons" would be too comprehensive.

(*Dj*) Extract from the Board's reply:

Para. 8. Government have, so far from exempting bills of lading, not even exempted duplicates or triplicates of those instruments from stamps, though parties engaged in mercantile transactions applied for an exemption for such duplicates and triplicates, and although it was accorded in the case of duplicates and triplicates of other instruments. Perhaps the duty might be maintained (without being liable to the objection urged by the Commissioners) upon bills of lading of or for any goods exported by sea to ports and places other than those of British India.

Extract from the Letter to the Board:

Para. 8. In the schedule attached to Regulation XII. 1826, provision is made for a stamp duty of one rupee on bills of lading for any goods to be exported. The Commissioners have omitted this clause, because the present schedule being of general application, the rule, if preserved, would include bills of lading for goods exported by sea from a provincial port, and might be held to extend also to bills of lading for goods exported either by land or water from the territories of the presidency of Fort William to those of any neighbouring presidency or state, all of which writings are now free of tax.

Remarks.—The objection made by the Commissioners to the provision under consideration has not been removed by the explanation and suggestion of the Board. The Commissioners do not attach much weight to the fact that bills of lading for goods exported by sea from Calcutta have hitherto been liable to duty, as, according to all accounts, the whole Regulation has been nearly inoperative, and to include under the rule bills of lading of or for goods exported by sea from the out-ports, would be to impose a new tax. The Commissioners, with these remarks, submit the question to the decision of Government.

(*k*) Query, after "government securities," insert "or bank shares."

The Commissioners observe that bank shares are included in the general terms at the end of the provision, and they think it better that they should remain so, rather than be classed with government securities; the stamp required by the rule will then be regulated by their real value, and not by their nominal amount.

Extract from the Board's Letter, dated 4th October 1830:

It appears to the Board that an objection lies to the terms "unlimited" and "uncertain," in No. 10, Schedule (A.) Regulation X. of 1829, followed by the Commissioners in No. 10 of the same schedule in the new Act. The circumstance of the terms in question not being sufficiently definite, and admitting of more than one construction, has given rise to a long and intricate discussion now before Government, and the Board beg to suggest for the consideration of the Commission, whether it would not be preferable to word the No. 10, Draft Schedule (A.) in the new Act, thus, "Bonds, when the amount of money

Adopted.

money to be secured is not specified," which will place the meaning at present intended to be conveyed by the words "unlimited" and "uncertain," beyond the chance of misconstruction.

(*E l*) Extracts from the Board's reply:

Para. 9. Collateral bonds are almost invariably given with mortgages, conveyances, leases, settlements, and sometimes with money bonds. The Board think that the entry had better be retained, but concur in opinion with the Commissioners that the stamp should be regulated as in the cases of collateral instruments in Nos. 16 and 35.

Extract from the Letter to the Board:

Para. 9. Separate provisions are made in the Calcutta schedule for "bonds" taken as collateral security with some deed or instrument that has paid the *ad valorem* duty, &c. and "bonds of indemnity," and both are charged with a stamp duty of eight rupees. These provisions do not appear in the schedule of Regulation X. 1829, and the Commissioners, not being aware that they are necessary, have omitted them in the draft of the new schedules. If the rules respecting collateral bonds be preserved, the Commissioners are of opinion that the stamp required for them should be regulated as in the analogous cases of collateral instrument in Nos. 16 and 35.

Remarks.—This provision has been inserted in conformity with the Board's opinion.

(*m*) Query, included in the general exemptions.

Cancelled accordingly.

(*n*) Ought not to be numbered, no stamp being required by Draft Schedule (A.) It should also precede exemptions, that is to say, it should stand after the number prefixed to collateral bonds, as suggested in the separate letter, and before the word "exemptions."

The Commissioners have adopted these suggestions.

(*o*) Query, included in general exemptions.

Omitted accordingly.

(*p*) Query, to be treated on the principle laid down at entry 13. If that amount of composition exceeds 1,000 rupees, 8 rupees; if the amount of composition does not exceed 1,000 rupees, then according to the scale prescribed for bonds for the payment of money. At entry 16, "Conveyances," a word is employed to which the Board think an objection exists; the word is "heritable," which might perhaps be exchanged for "immoveable," as conveying at once the meaning which is, the Board believe, attached by law, rather than common language, to the word heritable.

This suggestion has been adopted.

(*q*) Query, to insert as in "Bonds," "2,00,000 - - - 175 rs." In bonds for two lacs of rupees, 120 rupees is chargeable as stamp duty; intermediate sums between two and three lacs are liable to a stamp of 150 rupees. In conveyances, a conveyance where the consideration money is two lacs of rupees, pays 150; but there is no increase of stamp duty on any conveyance for an intermediate sum between two and three lacs of rupees: 175 rupees is suggested to bring the entry to a correspondence to that of bonds.

The Board appears to have misapprehended the meaning of this provision. The Commissioners, adhering to what they conceive to have been the intention of the rule, have made an alteration in the wording for the purpose of rendering the rule more clear.

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(*r*) Query, both the entry and the exemption note to be included in the general exemptions.* The words "exemptions continued," at the end of the note, may then be omitted.

This suggestion has been adopted.

(*s*) Query, insert "or instruments," after deeds.

This addition seems to the Commissioners to be unnecessary, but not otherwise objectionable.

(*t*) It is suggested, whether Nos. 18, 19, and 20, might not be thrown under one head, and somewhat shortened, as follows: No. 18. Copy of any deed or instrument, or any part thereof, attested to be a true copy or a true extract, where such copy or extract shall be furnished to a party to such deed or instrument, or to any other person on his or their behalf, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby, the same stamp as required for the original deed by this schedule; and where such copy or extract shall be made for the security or use of any person not being a party to such deed or instrument, or taking any benefit or interest secured thereby, per sheet, eight annas. Under Regulation X. of 1829 (followed by the Commissioners in No. 2) parties, by merely taking extracts, may evade the duty intended to attach to the copy whereby they prove their interest. If their interest is equally proved by an extract, there is no reason why the extract should not bear the full duty, *i. e.* the same as required for the original deed from which it is extracted.

The Commissioners have great doubts of the advantage of adopting the whole of the Board's suggestions, but they have made such alteration in No. 18 as is calculated to meet the case adverted to in the last part of their recommendation.

(*u*) Query, instead of "from any of the public offices" insert from any of his Majesty's, or the Honourable Company's courts or offices, per sheet. The entry at No. 21 would run alphabetically thus, "Copies authenticated of any," &c.

This provision having been hitherto confined to copies of writings furnished from the offices of government, the Commissioners do not feel inclined to extend it in the manner proposed by the Board. The word "copies" has been transposed as suggested.

(*v*) It is suggested that these exemptions, adopted from Regulation X. of 1829, are not requisite, being natural exemptions, if the terms may be used. In the first case of exemption the party never intending to plead the copy in a court, would naturally avoid putting himself to the expense of a stamp, while, when copies are retained in public offices, government become in some sort a party to the transaction. In the second case of exemption, papers for which stamps are not specially required by the Regulation are, as a matter of course, exempt.

Although for the most part these exemptions may not be indispensably necessary, the Commissioners are not quite satisfied that the law would always be so construed if special provision were not made for them. With respect to copies of deeds, &c. retained in public offices on returning the originals, the Commissioners think that it is quite necessary to preserve the exemption.

(*w*) Query, to be inserted under letter (*g*) thus, "Gift and dower, deeds of."

The Commissioners have adopted this suggestion.

(*x*) This number does not appear essential; it falls naturally under the head of "Agreements."

The Commissioners concur in this observation; and have cancelled the provision accordingly.

(*y*) Query, insert "or instrument."

Adopted.

(*z*) Query,

It

* *Vide* letters (*t t*) in these observations.

(*z*) Query, omit "real."

It appears to the Commissioners that the original intention was only to tax exchanges of real property, and they have no ground for assuming that Government would wish to extend the rule to exchanges of property of every description.

(*aa*) Query, insert "or interest therein."

The Commissioners conceive that the words "real property" include all such proprietary interest in land as the Board wish to be understood as comprised in the terms "interest therein;" and it therefore appears to them that the addition is unnecessary. If the Board intend any interest which could not be fairly construed as real property, the Commissioners cannot assume that Government would desire the extension of the tax.

(*bb*) Query, "Periodical rent."

A slight alteration has been made in consequence of the Board's suggestion.

(*cc*) Query "periodical" in all places.

Ditto.

(*dd*) Taken from the existing Regulations, but not requisite. There is no stamp required when the rent does not exceed 12 rupees per annum.

Cancelled, not only because it is not requisite, but also because it would have an objectionable operation, as exempting leases of the nature described in No. 28, (now 27,) from a stamp as for a conveyance.

(*ee*) Taken from existing Regulations, but as far as the word "also," (that word inclusive), the exemption can be omitted and included under general exemptions; the remainder of the exemption is necessary.

Cancelled, both because it is unnecessary with reference to the general exemption, and because the restrictive note respecting writings executed to or by the Court of Wards, local agents, &c., is only an exception to the general exemption, not the special one.

(*ff*) From Regulation X. of 1829; but the note does not appear necessary. The exception made in the previous exemption with regard to pottahs and kabooleats exchanged with ryots and the other actual cultivators of the soil, clearly confines the exemption to transactions in which ryots and the other actual cultivators of the soil only are concerned, and of course the exemption so limited could not be pleaded by the zemindars, &c. contracting those engagements with each other which are adverted to in the note.

Ditto.

(*gg*) This entry ought not to bear a number, but the particle "for" should be prefixed, as in the case of the enty, "For copies of revenue and judicial papers," &c. following No. 21.

Adopted.

(*hh*) It is suggested whether the schedule could not be materially shortened in this place by using a single entry to the following effect:—"33. Mortgage, (kutkubala bye, bilwufa, bhog bhunduk,) or other security of or affecting any lands, estate or property, real or personal, or government securities or bank

The Commissioners are on the whole inclined to adhere to the draft as it stands. They apprehend that more would be lost in clearness and precision by the adoption of the proposed consolidation than the value of what would be gained in conciseness. It appears to them also that the expression "a bond for

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bank shares; also any agreement, contract, or bond, accompanied with a deposit of title deeds for making a mortgage or other security on any estate or property therein comprised; the same stamp as for a bond for the like purpose.

The words "for the like purpose" appear sufficiently to indicate that the rate of duty chargeable is the rate chargeable upon bonds for the like purpose; thus No. 35 in the draft provides for "deeds of mortgage given for the security of annuities, &c. for an indefinite period, such as life annuities," the "same stamp as for ten times the annual payment." The proposed entry says, "the same stamp as for a bond for the like purpose." On turning to the head "Bond, No. 9," we find a "bond for the like purpose," that is to say, "for annuities for an indefinite period, such as a life annuity," and the stamp the same as for a bond for the payment of a sum equal to ten times the yearly payment.

The same observation applies to No. 8 and No. 10; while the Board have proposed in their separate letter, para. 9, a provision for retaining collateral bonds, which will provide for that transaction which, under the head Deeds of Mortgage, in the Draft Schedule, commences "where a bond may have been already taken for the amount secured, &c."

for the like purpose," does not with sufficient accuracy apply in all the cases which the Board have endeavoured to comprise in a single entry.

(*ii*) Same as existing Regulations; but the Board do not clearly apprehend why this description of mortgage and assignment should not bear the same duty as any other mortgage. The whole entry might be under the head of mortgages, as suggested at (*hh*).

The Commissioners do not feel themselves prepared to recommend the government to alter the existing tax on the banking and commercial transactions which fall under this article, by putting them on the same footing with other transactions falling under the preceding number.

(*Fjj*) Extract from the Board's reply:

Para. 10. If the Board rightly apprehend the change here contemplated, the principle of Regulation X. of 1829, is retained; but when any sum of money is paid for equality of partition, one stamp of the amount necessary to cover both the deed of partition and the payment for equality of partition is to be used instead of two. This indeed has been sometimes the practice under the existing law, but the amendment of the Commissioners, if correctly apprehended by the Board, provides for it more distinctly. "The principal deed" adverted to by the Commissioners as occasioning difficulty, is not a principal deed in the common signification of the term, that is to say, it is not the chief or most important deed used in the transaction, nor could it be, for, as observed in your communication, each copy of the deed of partition must be a counterpart of every other copy. But the word "principal" is used in Regulation X. of 1829, in contradistinction to the collateral deeds by which deeds of partition are sometimes accompanied.

Para. 11. It seems necessary to provide for these collateral deeds in the new Act; perhaps the best mode of doing

Extract from the Letter to the Board:

Para. 10. The Commissioners have endeavoured to express what appears to them to be the intention of the corresponding provision in the schedule of Regulation X. of 1829, but they are not quite certain that they have put the right construction upon it; they conceive it to have been meant, that when the property constituting the subject of partition is divided otherwise than in the proportion which the sharers are respectively entitled to, and a payment of money is consequently required to adjust the shares, the stamp for each sharer's copy of the deed of partition should be of the joint values of the stamp which would have been required for it had the subject of partition been so divided as at once to give each sharer his just share, and of the stamp for a conveyance for property of the value of the payment so required. But this is not clear from the terms of the provision referred to. Another difficulty also arises in regard to that provision, from the mention of a "principal deed." According to the primary rule, it should seem that the contents of every sharer's copy of the deed of partition should exactly correspond, each copy being, in fact, a

counterpart

doing so is to extend to them the principle laid down in the last entry of No. 35, Draft Schedule (A.)

counterpart of every other. It therefore does not appear what room there is for distinguishing any particular one as the principal deed for the purpose of the additional stamp required.

Remark.—The intention of the Commissioners was to preserve the rule as it stood; only by altering the wording of it to render it more clear. To that extent the Board seem to offer no objection to the draft. It appears to the Commissioners that the existing provision contemplates the whole transaction being on one stamp paper; but if the contrary be found to be the practice, it may be necessary to provide a rule for the collateral deeds, as suggested by the Board, and they might be called upon to submit the specific provision they would recommend.

(*k k*) Vide observation at (*f*).

See corresponding remarks.

(*G ll*) Extract from the Board's reply:

Para. 12. Should the Commissioners consider it desirable to bring receipts of the description contemplated in this paragraph *really*, and not as now *nominally*, under the operation of the stamp law, the Board think that the difficulty apprehended may be met by an entry in Schedule (A.) to the following effect:

"Receipts for money deposited in any bank, or in the hands of any banker, or any other person or persons, if the same shall not show on the face of the receipt that no interest is payable* on the money deposited."

"When it shall appear from the terms of the receipt, that the money is liable to be withdrawn on demand on or within three months."

"If for" a sum of money, &c. &c.

"When it shall appear from the terms of the receipt that the money is liable to be withdrawn after three months, but within one year."

"If for a sum," &c. &c.

"When it shall appear from the terms of the receipt that the money is liable to be withdrawn after one year, † *or when there shall be nothing on the receipt distinctly to show within what period the money is to be withdrawn.*"†

"If for any sum not exceeding," &c. &c.

Extract from the Letter to the Board:

Para. 11. The Commissioners have preferred drawing out a distinct table for these receipts, to declaring that they shall be deemed and taken to be promissory notes. They entertain, however, great doubts as to the expediency of the provision. They are not aware that receipts of the kind in question usually contain any stipulation for the payment of interest; that condition, where it does exist, is generally, the Commissioners believe, either implied by the custom of the bank or agency, or settled by specific agreement; at any rate, it seems improbable that after the operation of this rule shall have commenced, there will be many instances in which such receipts will contain any stipulation for the payment of interest, and the provision will therefore fail of its effect.

Remarks.—The Commissioners do not consider it necessary to submit any additional observations on this subject; it will rest with the Government to determine what course shall be taken, in regard to this portion of the schedule.

(*m m*) Query, included in the general exemptions?

Cancelled in consequence of the Board's suggestions.

(*n n*) Apparently unnecessary, *vide* remark at (*ff*).

Ditto.

(*oo*) Need

See

* This, as far as the mere preparation of the receipt was concerned, would only impose upon agents and bankers the necessity of having the words "no interest payable" printed on their receipts.

† Not provided for in the Draft Schedule, but apparently necessary.

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(*o o*) Need not be inserted, if the suggestion in the separate letter, paragraph 12, be adopted.

See remarks at (*G ll*), with which this question is connected.

(*p p*) Query, insert "bank shares."

Bank shares being included under the word "property," the Commissioners do not think it necessary to specify them.

(*q q*) Query, to run thus, "The same stamp as for a bond for the payment of an equal amount or value, or in cases in which the value shall not be expressed, an optional stamp; *see* section 4 of the Act."

The Commissioners do not think that the suggested alteration would improve the draft, which closely follows the terms of the existing provision.

(*r r*) Need not be inserted here; *vide* observations at (*w*).

Cancelled accordingly.

(*s s*) Query, omit "of Government." An officer of one of his Majesty's courts may be a party, who, though a public officer, is not an officer of Government, as ordinarily understood.

Ditto.

(*t t*) Add as follows: "Neither does it extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of court, in which case the purchaser shall be required to pay, along with the purchase money, the price of the requisite stamp, or otherwise provide such stamp*, and shall receive from the officer conducting the sale a deed of sale (byenama) executed on the proper stamp."

This addition has been made with the substitution of the word "else" for "otherwise;" *see* (*r*).

The Commissioners suggest for the consideration of Government, whether the note should not also be made to declare that the exemption does not apply to the transactions of officers of the Supreme Court employed in the administration of estates.

(*u u*) No instrument or writing specified in this schedule (excepting copies and extracts provided for in No. 20 and No. 21) which shall not be contained in one sheet or piece of paper, or other material, shall be considered to be on the proper stamp, unless the seals and signatures of the parties and witnesses be on the stamp prescribed for the same in this schedule." The change in the terms of the general rule is proposed, as making the penalty positive and more specific. The words "it shall suffice," in this part of Regulation X. of 1829, seem to leave an opening for dispute.

It appears to the Commissioners that the provision in the draft is more clear and precise than that proposed by the Board to be substituted for it.

Extract from the Board's reply to the Letter from the Commissioners:

Para. 15. There are many deeds or writings used, or at all events prepared in Calcutta, which do not appear to be separately provided for in the Draft Schedule (A.), but which do not still fall under No. 1, in that draft. The stamp required under that

On these paragraphs the Commissioners remark, generally, that their object has been rather to improve than extend the existing schedule. How far it may be necessary to adopt the suggestions of the Board, either for the purpose of effecting that object rest

* This addition appears necessary to allow of parties producing stamps which they may for their convenience have purchased elsewhere.

that number has reference to the amount value, but the instruments above adverted to relate to matters and acts not susceptible of valuation.

in a higher degree, or with a view to the extension of the stamp tax, it will rest with the Government to determine.

Para. 16. By the existing Calcutta Regulations, many of these instruments and writings fall under the two following heads, either under the head of Agreements (the first entry in the Calcutta Schedule), or under the head of "Deeds of any kind not otherwise particularized," in the said schedule. The stamp on each case bears a fixed value of eight rupees.

Para. 17. The writings or instruments adverted to are in most instances peculiar to English law, and arising out of its intricate technicalities; the Board cannot even pretend to an acquaintance with the nature or intent, or use, of many of them. It will be readily perceived, however, that amongst others, neither a notarial Act or a warrant of attorney can be classed under any of the entries in the Draft Schedule (A.), while a dissolution of copartnership, a declaration or revocation of use or trust of or concerning estates or property, though both in the nature of deeds, will not fall under the entry deeds in the schedule, because the duty on deeds is a rateable one.

Para. 18. The Board have caused to be prepared a list* of the writings in question which has been drawn up, with the remarks opposite to each entry, by a very intelligent and valuable native officer, Ramchunder Ghosaul, who is attached to the office of Collector of Calcutta Stamps, and who is probably more familiar with the working of Regulation XII. of 1826 (by far the most difficult portion of the law to amalgamate with a general scheme), with the means by which its provisions are evaded, and with the practise of attornies and others in obtaining or avoiding stamps for the several deeds and instruments constantly employed in their possession, than any other individual attached to the department.

* Marked (No. 1).

Para. 19. This officer had also prepared a schedule less voluminous and elaborate than that drawn up by Mr. Cleland, which has already been before the Commission, but comprising a larger portion of the deeds and instruments in use within the jurisdiction of his Majesty's courts, than the Draft Schedule (A.) The Board instruct me to forward this paper† both as being creditable to the officer who has prepared it, and as the Commissioners might desire to inspect it prior to finishing the draft of the new Act.

† Marked (No. 2).

Para. 20. It occurs to the Board that a number of the writings and instruments in the list marked (No. 1), might be included in the new Schedule (A.), under an entry to the following effect:—"No. 22. Deeds or instruments not otherwise particularized or provided for in the schedule, nor expressly exempted from all stamp duty, if relating to matters not capable of valuation, eight rupees, or such sum as may appear fitting."

Para. 21. The above entry would not, the Board believe, include all the writings specified in Ramchunder Ghosaul's list, but those which it did not include could of course be classed under separate proper heads if the Commissioners thought it desirable.

(signed) *J. P. Grant,*
Officiating Secretary, Indian Law Commission.

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SCHEDULE (B.)

Sep. India Cons. 20 Oct. 1837. No. 31.

OBSERVATIONS and SUGGESTIONS of the Board of Customs, Salt, and Opium.	REMARKS of the Indian Law Commissioners.
(*H*) On the draft of Schedule (B.)	Extract from the Letter to the Board: Para. 13. The reference to Schedule (A.) for security bonds, &c. not executed by order of court, has been omitted, as appearing to the Commissioners superfluous; such instruments fall necessarily under the proper heads in Schedule (A.), where reference is already made to similar instruments when taken by, or by order of, any court, &c.; *see* No. 12, Schedule (A.)
(*a*) Registers' courts are abolished. (*b*) Provincial courts of appeal are abolished.	Although these courts are abolished, applications will continually be received for copies of decrees formerly passed in them. The Commissioners therefore think it necessary to retain them in this entry.
	Extract from the Letter to the Board: Para. 14. The specification of the size of the copy paper has not been inserted in the Draft Schedule, because that is liable to variations at the discretion of the Governor-general in Council, under the 3d section of the Act; and it will be the duty of all public officers to take care that no copies are furnished from their offices, except upon stamps of the kind prescribed for that purpose.
(*c*) Query, add, "only in matters relating to their treatment in gaol, when the prisoners are confined under a civil process, and in matters relating to their treatment in gaol, and the case in which they are confined under criminal process."*	The Commissioners concur in the suggestion.
(*d*) Query, Petitions to the Board of Customs, Salt, and Opium, from molunghees, and from ryots engaged in the cultivation of the poppy on account of Government, only in matters connected with the manufacture of salt or the cultivation of the poppy on account of Government, or with their claims for payment, or for protection against extortion on the part of officers of the Salt and Opium Departments.	Ditto.
(*e*) Query, to run thus: "Plaint, petition of, in regular original suits, and in regular and special appeals, instituted," &c.†	Ditto.
(*f*) Query, to transpose the words thus: "Plaint, petitions of;" also at No. 8, the words "plaint, petition of, in," might precede the words "summary claims."	Ditto.
(*g*) It might perhaps be advisable to modify the rules respecting the refund of stamp duties on the adjustment of cases by razeenamah; at present there is very inadequate security against the same	The Commissioners are not aware that rules founded upon the principles here proposed would be liable to any objection.

* *Vide* Circular Orders of the Sudder Dewanny Adawlut, No. 17, 28 May 1830.
† *Vide* Circular Order of the Sudder Dewanny Adawlut, No. 27, dated 4 February 1831.

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same refund being made oftener than once. This abuse has actually occurred, nor would it be checked under the rule proposed in the Draft Schedule (B.) A rule to the following effect is proposed for the consideration of the Law Commission:

If the suit be dismissed on such application before the pleadings have been completed, and the case called up, and the plaintiff applies for a refund of the stamp duty paid on the plaint, the Court, on ascertaining the correctness of the application, by reference to the nathee, will give a certificate, stating the value of the stamp on which the plaint is written, with the number of the case on the file of the court, and the names of the parties in the case; he will then transmit the said certificate, with the paper on which the plaint is written, to the collector, and that officer, provided always there be no exception to the stamp, will return the plaint to the court, and with it the amount to be refunded, noting upon the plaint that the amount has been so forwarded to the court, with date of the transaction. The Court will pay the amount so forwarded to the party entitled to receive the same, taking a receipt from him on the face of the petition of plaint, and a separate receipt to be forwarded to the collector.

The above is merely a suggestion, the wording of which, if adopted, will of course have to be amended; it is offered partly with reference to abuse intended to be checked, and partly with advertence to circular orders of the Sudder Dewanny, No. 86, dated 10th May 1833, and No. 92, dated 9th August 1833.

The second rule, respecting return of half of the value of the stamp after the pleadings have been completed, will of course require a corresponding alteration.

Refund is made of stamp duty paid on plaints preferred to collectors of land revenue in summary suits, connected with arrears or exactions of rent, and which have been adjusted without proceedings coming on in the collector's cutcherry. If it be deemed proper to authorize these refunds, a provision, similar to the above, will be requisite, with some alteration.

Extract from the Board's second Letter, dated the 4th October 1836:

I am further directed to request that you will have the goodness to draw the attention of the Commissioners to the rules contained in clause 5, section 2, Regulation XXVI. of 1814, and section 8, Regulation XIX. of 1817, which it will probably be considered desirable to incorporate with the new Act, if Schedule (B.) be retained.

The Commissioners concur in the suggestion.

(signed) *J. P. Grant,*
Officiating Secretary to Indian Law Commission.

(No. 28.)

Not recorded.

Extract from the Proceedings of the Honourable the President of the Council of India in Council, in the Legislative Department; dated the 13th August 1838.

Read a letter from the Chief Secretary to the Government of Fort St. George, dated the 23d ultimo, with its enclosures, relative to the means necessary for preventing frauds in the Judicial Department by means of stamped documents.

Ordered,

Letter from the Chief Secretary to the Government of Fort St. George, dated 22 December 1836, with Enclosure.

Ordered, that the foregoing papers, with those noted in the margin, be forwarded in original to the General Department, where the general question of stamp laws is now under consideration.

Ordered further, that the original papers be returned when no longer required.

(True extract.)

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India.

Legis. Cons. 25 Jan. 1836. No. 8.

(No. 995.)

From *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George, to *W. H. Macnaghten*, Esq., Secretary to the Government of India.

Sir, Fort St. George, 22 December 1835.

Jud. Department. Dated 3 Dec. 1835. No. 190.

I AM directed by the Governor in Council to transmit to you, for submission to the Honourable the Governor-general of India in Council, the accompanying copy of a letter from the Register to the Sudder Adawlut, suggesting a modification of Regulation XVII. of 1802 of the Madras code, and an extension of its provisions to deeds appertaining to property of every description, together with copies of the papers referred to therein, with a view to the subject being referred to the Law Commissioners for consideration, when they shall arrive at that stage of their labour with which the question may be connected.

I have, &c.
(signed) *H. Chamier*, Chief Secretary.

(No. 190.)

Legis. Cons. 25 Jan. 1836. No. 9. Enclosure.

From *W. Douglas*, Esq., Register, Sudder Adawlut, to the Chief Secretary to Government at Fort St. George.

Sir,

I AM directed by the Judges of the Court of Sudder Adawlut to transmit to you, to be laid before the Right honourable the Governor in Council, copy of a letter from the Provincial Court in the Western Division, together with its enclosure from the acting assistant judge of Malabar, in which is submitted for consideration the propriety of extending to deeds of every description the provisions of Regulation XVII. of 1802.

2. It will be perceived by the letter from the Secretary to Government in the Judicial Department, dated the 31st of August 1827, that in consequence of the Right honourable the Governor in Council having been of opinion that great benefit would result from an extended application of Regulation XVII. of 1822, in "preventing fraudulent transfers of property, and the litigation and losses to which they give rise," the Court of Sudder Adawlut were directed, with reference to an extract from the draft of a Regulation for Malabar, on the subject of a registry for deeds in that province, prepared by the commissioner, and laid before Government in 1823, to prepare a revised general Regulation, in which any defects which Regulation XVII. of 1802 might contain should be remedied, and that, among other modifications, provision might be made for the payment of more moderate fees on registry, which was considered one of the causes why the Regulation had not been more generally acted upon.

3. The view taken of the subject by the Court of Sudder Adawlut in their proceedings, dated the 16th of April 1829, was communicated to Government under date the 30th of June 1830; and the causes which prevented the Court of Sudder Adawlut framing the draft of a new Regulation, were fully explained in their register's letter of the same date; and I am directed to add, that the judges have not yet been furnished with the opinion of the Board of Revenue on the several suggestions contained in their proceedings of the 16th of April 1829.

4. It should be observed, however, that in consequence of the representations made to the judges from the several zillah and provincial courts, showing "that the most injurious interruption to business had been occasioned by the practice, universally prevalent, of preferring fictitious and collusive claims to property" attached

attached for sale in execution of a decree, the Court of Sudder Adawlut submitted to Government, under date the 3d of June 1831, the draft of a Regulation providing for the punishment of false allegations in petitions to the courts, and fictitious claims to property so situated; and an enactment to this effect, as subsequently modified, now stands in the code as Regulation I. of 1832.

5. Another reason which was considered to have prevented the operation of Regulation XVII. of 1802 was, the great distance to which parties were required to travel to procure a registry of their deeds, in consequence of the superintendence of the registry office being confined to the register attached to the zillah court, or his authorized deputy; but this evil has, to a certain extent, been modified by Regulation XI. of 1831, which provides for the registry of deeds at the stations of the auxiliary courts and those of the native judges, and for the performance of the office by the zillah judge himself, when there may be no civil servant at the station to perform the duty.

6. Regulation XVII. of 1802 requires, in the opinion of the Court, yet further modification in this respect, and they consider it desirable that the district moonsiffs should be authorized to receive deeds of mortgage required to be registered, and to take from the parties and their attesting witnesses depositions in proof of their authenticity, and to forward the original deed, together with the depositions, to the zillah, auxiliary, or native court, for registry; that provision should be made for the payment of more moderate fees on registry, in whatever office it may be effected, and that the provisions of Regulation XVII. of 1802 should be extended to deeds appertaining to property of every description.

7. As it is deemed desirable, whenever practicable, to avoid legislating for particular occasions, the judges, with reference to the order of Government, No. 773, dated the 9th ultimo, abstain from requesting permission to prepare the draft of an Act with a view to enactment; but considering the subject of a modified and extended registry of much importance, they would respectfully suggest that a copy of this communication, together with a copy of the correspondence noted in the margin *, be laid before the Supreme Government, with a view to the subject being referred to the Law Commissioners for consideration, when they shall arrive at that stage of their labours with which the question may be connected.

I have, &c.

Sudder Adawlut Register's Office,
3 December 1835.

(signed) *W. Douglas*,
Register.

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* Submitted on former occasions to Government:

No. 400 of 1827; from Combaconum, 9 July 1827.
– 107 of 1827; to Government, 6 August 1827.
– 535 of 1827; from Government, 31 August 1827.

Proceedings of 16th April 1829:

No. 105 of 1830; from Centre Division, 29 January 1830.
– 384 of 1830; from North Division, 8 May 1830.
– 83; to Government, 30 June 1830.
– 817 of 1830; from Government, 21 October 1830.
– 66 of 1830; to Government, 25 April 1831.
– 4 of 1832; from Government, 30 December 1831.
– 3 of 1832; to Government, 10 January 1832.
– 73 of 1832; from Government, 25 January 1832.
– 20 of 1832; to Government, 8 February 1832.
– 36 of 1832; from Government, 13 January 1832.
– 11; to Government, 23 January 1832.
– 92; to Government, 3 June 1831.
– 454 of 1831; from Government, 14 June 1831.
– 99; to Government, 21 June 1831.
– 666 of 1831; from Government, 20 September 1831.
– 708 of 1824; from Western Division, 17 November 1824.
– 131 of 1824; to Government, 4 October 1831.

Now submitted:

No. 173 of 1822; from Masulipatam, 8 March 1822.
– 20 of 1824; from Combaconum, 8 January 1824.
– 640 of 1828; from Centre Division, 8 October 1828.
– 644 of 1828; from Centre Division, 10 October 1828.
– 755 of 1828; from Centre Division, 10 December 1828.
– 408 of 1827; from Western Division, 11 July 1827, referred to in para. 6 of the letter from the Register to the Sudder Adawlut to Government of the same date.

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On Stamps.

From *W. B. Anderson*, Esq., Third Judge, for Register, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

1. I AM directed to transmit, to be laid before the judges of the Court of Sudder Adawlut, the accompanying copy of a letter of this date, from the acting assistant judge of Malabar, submitting the propriety of extending to deeds of every description the provisions of Regulation XVII. of 1802.

2. The judges of the Provincial Court are of opinion, that the subject is of sufficient importance to merit the consideration of higher authority.

(signed) *W. B. Anderson*,
Third Judge, for Register.

Provincial Court, Western Division,
15 October 1835.

From *G. Sparkes*, Esq., Acting Assistant Judge, Auxiliary Court, to the Register to the Provincial Court of Appeal, in the Western Division.

Sir,

1. I TAKE the liberty of submitting to the judges, whether it may not be advisable to refer, for the consideration of the Sudder Adawlut, the propriety of extending to deeds of every description the provisions of Regulation XVII. of 1802.

2. That Regulation holds out great advantages to the registry of deeds which pertain to landed property; but it has been found by experience that there are very poor persons who apply for a participation in those advantages. The chief causes may be the distance of the court from the residence of the majority of the landholders, and the incautious character of the great mass of every agricultural population.

3. The state of the mercantile community is far different: living, as the most wealthy of them do, in the very towns where the courts are held, and being taught by experience the necessity of using every precaution against the chances of litigation, they would gladly avail themselves of an opportunity to fix the stamp of authenticity on their deeds.

4. When the person to whom a deed is granted lives in another country, nothing gives him greater security that the deed has been duly executed than a certificate of its public registration. Applications are often made to the courts to register deeds of this description, and great inconvenience is continually experienced by their being unauthorized to comply.

5. In order to make registration of still more easy attainment, the fee might be reduced from two rupees to one. Even supposing that the number of deeds registered remain the same as before, the difference to government (or in zillah courts to registers) will be a mere trifle; in the four courts in which I have sat, certainly not two rupees a month in each.

6. If the practice of registering money deeds becomes general among merchants, the landholders may begin to see the benefit of following their example; and if the increase of the registration be the surest means of preventing disputes, the proposal now submitted will deserve regard, so far as it is conducive to that end. Too great facilities cannot be held out to voluntary registration; it is only when compulsory that it becomes a hardship.

(signed) *G. Sparkes*,
Acting Assistant Judge.

Tellicherry, 15 Oct. 1835.

(No. 107.)

From *G. J. Casamajor*, Register, to the Secretary to Government in the Judicial Department.

Sir,

WITH reference to my letters, dated 12th and 26th ultimo, No. 97 and 102, I am directed by the Court of Sudder Adawlut to transmit to you, to be laid before the Governor in Council, the annexed copy of a letter from the assistant judge of

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Cuddapah, submitting the question whether he has authority to open a registry for wills and deeds, under Regulation XVII. of 1802.

The judges think it clear that an assistant judge has no such authority under Regulation I. of 1827, the only general references to the Regulations made therein, those in clause 1, section 5, and section 9, respect the enactments for the guidance of zillah judges; but the office for the registry of wills and deeds is under the superintendence of the zillah register, to whom there is no corresponding officer in the auxiliary court.

The judges entirely agree in the opinion of the assistant judge, that it would conduce to the convenience of the inhabitants to open a register-office at the auxiliary courts, and they are aware of no sort of objection to the measure; the documents to be registered in the auxiliary court register would be those executed, or affecting property within that court's local jurisdiction, and these should not be registerable in the zillah register unless part of the property affected was situated within the auxiliary court's jurisdiction, and part without it, though within the zillah, in which case the registry should be made in both registers; but it ought not to be optional in any case to register in either office, as this would render a reference to both registers necessary before a party interested in any property could be sure that he had availed himself of the security intended to be afforded by registry. The fees should be drawn by the assistant judge.

Should the Governor in Council be pleased to approve the foregoing suggestions, the necessary enactment will be fitly introduced into the same Regulation with those recommended in my letters above referred to. The judges think that it will be best not to publish the proposed Regulation for two or three months, in order to afford time to bring to view any other points connected with the auxiliary courts, which may require further provision, and that all may be comprised in the same Regulation, and only one supplementary be necessary.

Sudder Adawlut Registers Office, (signed) *G. J. Casamajor.*
6 August 1827.

From *H. Bushby*, Esq., Assistant Judge, to the Register of the Sudder Adawlut, Fort St. George.

Sir,

Application has been made to me in my official capacity to register deeds in my office; but I do not consider myself at liberty to receive applications of this description.

2. This duty has heretofore devolved on the register of the zillah, under section 7, Regulation XVII. A.D. 1802; but since the zillah has been divided into two separate and distinct jurisdictions, I think it a doubtful point whether that officer, under the foregoing section, can register deeds, if the property affected by them shall be situated in the jurisdiction of the auxiliary court.

3. If he can, the distance of the station in which the zillah courts is held prevents many individuals from registering their deeds in the office of the register of the zillah.

4. If he cannot, some provision should surely be made to enable assistant judges to register deeds in their office, and to draw the fees allowed to registers in section 14 of that Regulation.

5. Such a provision will doubtless benefit the assistant judge in some measure, without any great loss being sustained by the register, for the reason I before stated, and will also be found very convenient to individuals subject to the jurisdiction of the auxiliary court.

6. I therefore bring this matter to the notice of the higher court, in order that they may adopt whatever measures they think proper.

(signed) *H. Bushby*, Assistant Judge.

Auxiliary Court, 9 July 1829.

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(No. 414.)

From *H. Chamier*, Esq., Secretary to Government, to the Judges of the Sudder Adawlut.

Gentlemen,

Judicial Dept. 1. I AM directed to acknowledge the receipt of your register's letter, dated the 6th instant, No. 107, regarding the establishment of a separate registry for deeds originating within the jurisdiction of the auxiliary courts.

2. The Governor in Council entirely approves of your suggestions, and desires that an enactment may be framed accordingly.

3. I am directed on this occasion to transmit to you an extract from the draft of a General Regulation for Malabar, on the subject of a registry for deeds in that province, prepared by the Council some time ago, and laid before Government in the year 1823.

4. It is well known that Regulation XVII. 1802, "for establishing a registry for wills and deeds for the transfer or mortgage of real property," in the provinces generally, has, for some reason which is not ascertained, been little acted upon, although its provisions appear well calculated to prevent fraud in the transfer of property. As the operation of this Regulation was not to commence until the period of three years had elapsed from the date of its enactment, it may have been overlooked when the time for its being in force arrived; or in consequence of the registering of deeds not being declared obligatory, it may have been neglected; or parties may have been deterred from availing themselves of the security which it was intended to afford, in consequence of the amount of the fees demandable, which were perhaps fixed at a higher rate than was suited to the object of placing the benefit of the Regulation within the reach of persons whose concerns in the transfer of property are generally of inconsiderable extent; or it may owe its state of dormancy to the mode prescribed for giving it publicity, which seems from the concluding section to have been chiefly by sending Persian translates to the (town) cauzies of the several zillahs, who being themselves employed in attesting and registering deeds of transfer, could not be expected to regard the new enactment in any other light than as having a tendency to reduce their own emoluments, and would not therefore be forward to promote its success.

5. But whatever may have been the cause of the registry being so little resorted to, it seems certain that great benefit would result from it, in preventing fraudulent transfers of property, and the litigation and losses to which they give rise. The Governor in Council is therefore desirous that any defects which Regulation XVII. 1802, may contain, should be remedied, and a revised Regulation enacted, in which, among other modifications, provision might be made for the payment of more moderate fees. It may perhaps be found that the Regulation may be so framed as to render a separate Regulation for Malabar and Canara unnecessary. If not, you will be pleased to put into proper form the provisions contained in the accompanying paper, with such modifications as you may deem necessary, in order that they may be passed as a distinct enactment.

6. You will be pleased to communicate with the Board of Revenue on any point which may appear doubtful to you, and which they may have the means of elucidating.

(signed) *H. Chamier*,
Secretary to Government.

Fort St. George, 31 August 1827.

From *A. D. Campbell*, Esq., to the Secretary to Government in the Judicial Department.

Sir,

WITH reference to your letter, dated 31st August 1827, regarding the establishment of an office of registry for wills and deeds, originating within the jurisdiction of the auxiliary courts, I am directed by the Judges of the Court of Sudder Adawlut to transmit to you an extract from the proceedings of this court, under date the 16th April 1829, wherein are recorded the grounds for a reference there made to the Board of Revenue on this subject, as well as respecting the extension

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extension to unsettled districts of the provisions contained in Regulation XXVI. of 1802, which this court have decided not to apply to any estates except those permanently assessed under Regulation XXV. 1802.

2. The attention of the judges has once more been called to this subject by the letters from the provincial courts, in the Northern and Centre Divisions, of which copies are herewith submitted, and as more than 12 months have elapsed since a reference was made to the Board of Revenue, and the subject is one of importance and indeed of pressing necessity, they consider it proper to communicate to the Government the view which they have taken of it, and the causes which prevent their framing the draft of any new Regulation on the subject, until they are informed by the Revenue Department of the modifications necessary to adapt the provisions of Regulation XXVI. 1802, to the details of revenue in unsettled districts, and obtain their sentiments on the other suggestions made by this court. The Judges have called the attention of the Board to their former communication, and have requested an early reply to it.

(signed) *A. D. Campbell*, Register.

Registry Office, 30 June 1830.

Extract from the Proceedings of the Court of Sudder Adawlut, under date the 16th April 1829.

Read letter dated the 31st August 1827, from Secretary to Government, in the Judicial Department, regarding the establishment of a separate registry for deeds.

1. In the letter from the judge, in the zillah of Malabar, under date the 9th February last, the following passage occurs: "Every kind of fraudulent litigation on account of lands and their various tenures now pervades most of the civil suits, and obstructs the execution of almost every decree: but, by affording the utmost encouragement to the registry of deeds, and by modifying clause 2 of section 9, Regulation XVII. 1802, so as to enable the moonsiffs and other chief talook authorities to forward to the court for registry the deeds of all parties desirous of this precaution, the administration of justice would be accelerated, and the security of property would be better established."

2. The communication has recalled the attention of the judges to the letter from the secretary to Government in the Judicial Department, under date the 31st August 1827, respecting the establishment of an extended and modified registry for deeds, in lieu of Regulation XVII. 1802, which subject, from the pressure of other more important business, still remains undisposed of.

3. As connected with this matter, it seems proper to advert to the register and proclamation proposed to be issued by the former principal collector of Tanjore, under Regulation XXVI. 1802, in his letter to this court of the 20th May 1827.

4. In their proceedings of the 10th August 1827 this Court ruled that Regulation XXVI. 1802, is applicable exclusively to lands assessed in perpetuity, under the provisions of the previous Regulation XXV. 1802; that consequently the proclamation and register by the principal collector of Tanjore would be unwarranted by the Regulations: that in unsettled districts it would be illegal to declare the transfer of land invalid, and demand their revenue from the late occupier, because such transfer had not been registered; and that it was lawful for district moonsiffs to sell land paying revenue to Government, without the intervention of the collector, unless such sale involved the zemindary proprietary right established by Regulation XXV. 1802, in which case it must be made through him.

5. The judges, on the present occasion, have reconsidered this opinion, and see no reasons to doubt its correctness. It is true that the title and preamble to Regulation XXVI. 1802 are general; and that some of its sections, taken by themselves, might admit of a general application. But the most material enacting clauses, all those which prescribe the course to be observed preparatory to division or sale, viz. section 6 to 11, are, from their terms, exclusively applicable to lands assessed in perpetuity, under Regulation XXV. 1802: and even when Regulation I. 1819, by rescinding section 9, Regulation XXVI. 1802, allowed the division of lands assessed at a sum less than 500 pagodas, it enacted that such division "should not descend below" one entire village or dependant hamlet, with defined

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fined boundaries, "charged with a proportion of the permanent land tax;" thereby maintaining the original restriction of Regulation XXVI. to lands assessed in perpetuity, under Regulation XXV. 1802.

6. The law, as it thus stands, the judges are of opinion, very loudly calls for amendment. It is certain that in unsettled districts extensive sales of land must have actually taken place, and must continue to occur for arrears of revenue and under decrees of court; and it is desirable that the same should be conducted under such rules and restrictions as are adapted to the peculiar revenue details in unsettled provinces. Although sections 60 and 62, Regulation II. 1803, which exclude native servants, Europeans, or their descendants, from renting lands, may, *à fortiori*, be construed to exclude them from becoming the purchasers of lands sold for arrears, it is evidently desirable to extend to all districts the enactments on these points, as well as against the purchase of such lands by defaulters or their sureties, and against the registry of lands in fictitious names contained in Regulation XXVI. 1802.

7. With respect to registry, the judges believe that notwithstanding sections 23 and 24, Regulation 1803, provide for collectors keeping registers of all lands, yet from section 3, Regulation XXVI. 1802, not extending to unsettled districts, many transfers take place without their knowledge, and that nothing would more effectually check fraud and litigation, and put a stop to the heartburning, expense, perjury, and forgery by which litigation in India is too often attended, than the extension to unsettled districts of the provisions contained in section 3, Regulation XXVI. 1802. This would give publicity to the transfer of all lands paying revenue to Government, by rendering it incumbent on the proprietor to register the same, in order to insure his exemption from responsibility on account of the revenue. It would verify the register kept by collectors; and though this court have decided the present law to be otherwise, it may be essential to a correct registry of the lands paying revenue to Government, to extend to unsettled districts section 4, Regulation XXVI. 1802, in order that all sales may be conducted through the medium of the revenue authorities. The judges conceive that arrangements might be made to prevent this interfering with the moonsiffs executing their own decrees, more than is now the case when lands permanently assessed are sold under decrees executed by them.

8. Whilst fraud and chicanery in matters connected with land assessed to the public revenue would thus be checked, such practices between individuals in other cases, would no doubt be greatly prevented by an extended registry of the deeds themselves passed between them. Regulation XVII. 1802, has been of partial operation, partly by its provisions having rendered the registry of deeds merely optional, partly from the parties to deeds, or their representatives, being required by it personally to attend with their attesting witnesses before the European officer charged with the registry at the zillah station, in many cases far too distant from their domiciles.

9. It is to obviate this last difficulty that the extract from a Regulation for Malabar, forwarded to this court by Government on the 31st August 1827, suggests the transfer of the register's office from the European covenanted servant at the zillah station, to a separate native officer to be newly entertained for this purpose at the station of each amildar; whilst the zillah judge of Malabar in his letter, quoted at the commencement of these proceedings, apparently to meet the same end, proposes that the office of registry should continue as at present, but that the native authorities in the talooks should be newly authorized to receive and forward thither deeds for registry.

10. The judges are of opinion that the multiplication of the offices of registry is objectionable, as facilitating fraud, and that to meet the end in view, of an authentic register of deeds, it is necessary that the immediate control over the registry should continue vested in a covenanted European officer, to whom alone the custody of the books and attestation of their entries could be safely entrusted. There seems no objection at the same time to vest in the native moonsiffs of districts, and the native tahseldars of talooks, the power of taking from the parties and their attesting witnesses proof of the authenticity of deeds, and transmitting the original deed with the original depositions to the register. The depositions might be lodged in his office, and the original deed might be returned after registry, duly attested by the register.

11. The judges also are of opinion that after proper notice has been given, three

there exists no objection to declaring invalid all deeds not registered, executed after a certain date.

12. But as this subject, as well as the extension to unsettled districts of Regulation XXVI. 1802, under such modifications as may be necessary to adapt it to the details of revenue in those provinces, falls immediately within the cognizance of the Board of Revenue, the judges resolve to avail themselves of the option granted to them in the concluding paragraph of the letter from Government, of the 31st August 1827, to communicate with that Board, and accordingly direct that extract from these proceedings, and copy of the said letter, be forwarded to them; with a request that they state their sentiments thereon generally, and suggest such modification in Regulation XXVI. 1802, as they consider necessary to adapt it to the revenue management in unsettled districts.

(A true Extract.)

(signed) *A. D. Campbell,*
Register.

From *G. W. Saunders,* Esq., Third Judge for the Register, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

THE judges of this court submitted, so long ago as the 6th October 1815, to the consideration of the Court of Sudder Adawlut a plan of registering mortgages, so as to check false claims to property, on the plea of its having been mortgaged for the purpose of preventing its being sold in satisfaction of a decree, and they referred to it again in their proceedings of the 10th October 1828, a copy of which was transmitted to the Sudder Adawlut.

2. As such claims continue to be preferred to a degree which occasions much unnecessary trouble to the courts of justice, and to individual suitors in whose favour decrees have been passed, the judges of the court avail themselves of the opportunity of another petition having been presented respecting the same claim to mortgaged property as that which was referred to in their proceedings of the 10th of October 1828, to revive a subject which demands early attention. Although it seems to be generally admitted by the experience of the judicial European officers, that a very large proportion of claims to property legally adjudged to another are of a fraudulent nature, originating in the attempt of defendant to raise money on his property in contemplation of an approaching adjudication of it to the plaintiff in the suit, or in collusion between him and a pretended mortgagee, the judges would, out of respect to the few fair claims there may be, be unwilling to recommend that either the successful plaintiff or the mortgagee should be compelled to institute a regular suit for the recovery of his right; and they see no alternative but in the institution of a summary inquiry by the zillah judge, in cases in which the suit has originated in the zillah court, with the option of appeal from his decision to the superior courts. As the judges perceive no immediate means by which the investigation of such claims can be avoided, it remains only to propose such as will check the fictitious or fraudulent transfer of property.

3. They would beg leave to suggest that it be a rule, that no claim to property, on the ground of its having been mortgaged when it is going to be sold in execution of a decree, shall hold good, unless the claim is supported by a written document, and that document has been registered in a form similar to that prescribed by Regulation XVII. of 1802, before the passing of a decree against the owner of the property.

4. The judges believe that it has been the practice in some courts to consider such claims untenable which have been preferred subsequently to the first institution of a suit against the owner of the property; but besides that some suits differ in their origin and issue, the action being for general damages, and the adjudication being against specific property, it may be considered objectionable to bar the defendant in a suit from turning his property to the best advantage during a long period that the suit may take in deciding, and hard to deprive a mortgagee of immediate possession of property to which he had fairly acquired a right in ignorance

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ignorance of the institution of such a suit; a circumstance which may be considered as by no means improbable.

5. The judges do not recommend an adherence to Regulation XVII. of 1802, which prescribes that registries of such mortgages shall be made in the zillah courts, because they believe that the distance of those courts has universally prevented the operation of that Regulation throughout the Company's dominions; and they would be inclined to suggest that the office of the district moonsiffs should be that for registering mortgage deeds, because, from the respectability of their situations, their education and judicial habits, and from being in a great degree under the superintendence and control of the zillah judge, they are more likely to perform the duty with fidelity and regularity; but here the distance still operates to an inconvenient, though not to an equal degree as with respect to zillah courts, some villages within the jurisdiction of a moonsiff being as far as 20, 30, and even 50 miles from his court. The court are therefore of opinion, that the plan of registry by village kurnums, proposed in the letter from this court of 6th October 1815, should be tried, with this modification, that the village moonsiffs shall be associated with them, and that it shall be optional for parties to register their deeds in the office of the district moonsiff; that monthly abstracts shall be sent by village moonsiffs and kurnums to the district moonsiffs, of all deeds registered; that district moonsiffs prepare a similar abstract of registries in their own office, and that they send their own and the village abstracts regularly every month to the zillah court; and that both the village registers and the district moonsiffs shall receive a fee of one rupee for every deed registered by them.

I have, &c.

Chittoor Centre Provincial Court, Register's Office, 29 Jan. 1830.

(signed) *G. W. Saunders,*
Third Judge for Register.

From *George Garrow*, Esq., First Judge for the Register, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

I AM directed by the judges of the Northern Provincial Court to transmit to you the accompanying copy of a letter from the assistant judge of Masulipatam, suggesting the expediency of his being authorized to register deeds, &c. according to the provisions of Regulation XVII. of 1802. The judges of this court observe that there is a circular order of the Court of Sudder Adawlut which authorizes the zillah judges to register deeds in the absence of the register; but as this order provides only for the temporary discharge of the duty, and there is no express authority for its performance by the assistant judge, they are of opinion that such authority is requisite, the necessity of a registry office in this town, similar to that in contemplation by Regulation XVII. of 1802, being obvious.

Masulipatam, Northern Provincial Courts, 8 May 1830.

(signed) *G. Garrow,*
First Judge for the Register.

From *C. P. Brown*, Esq., Assistant Judge, to the Register of the Provincial Court of Appeal for the Northern Division.

Sir,

I HAVE the honour to inform the judges of the Provincial Court that I have repeatedly been applied to by native inhabitants of this place to register deeds, &c. for them, under Regulation XVII. of 1802 (as was formerly done in this office, when a register was attached to it).

2. I have been obliged to decline doing this without receiving authority for that purpose. My predecessor, indeed, allowed the usual book to be opened, which, had it been sanctioned, would have been a great convenience to the people.

3. The registry in the zillah court, formerly held at this town, having now been

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been removed to Rajamundry, the people are subjected either to the inconvenience of taking a long journey, which they might otherwise be spared, or of keeping their papers without the security of registry.

4. The manifest advantage of allowing a registry office to be reopened by the assistant judge at this place, will, I hope, induce the judges of the Provincial Court to recommend this for the sanction of Government: the fees received might, after the payment of expenses, be carried to the account of Government.

Auxiliary Court, Masulipatam, 3 May 1830. (signed) *C. P. Brown*, Assistant Judge.

(True Copy.)

(signed) *Geo. Garrow*,
First Judge for the Register.

(True Copies.)

(signed) *A. D. Campbell*,
Register.

On the 22d June 1826 the Board of Revenue laid before Government a report in great detail, respecting the sales of land for arrears of revenue in the Tanjore district. They showed that such sales had been carried to a mischievous extent during the administration of Mr. Cotton, without their privity or sanction; and that, contrary to the regulations repeatedly published by the local authorities, a considerable portion of these lands had been purchased by the native revenue servants or their connexions.

Para 5 of the Board of Revenue Proceedings, 19 June 1826.

To have annulled the whole of these unauthorized sales would have thrown the Tanjore district into the greatest confusion. The Board of Revenue, therefore, confined themselves to annulling the sale of those lands only which, during Mr. Cotton's administration, had been purchased by the native revenue officers or their connexions, described in the statement (B.), enclosed in that officer's letter of the 16th November 1824, and they expressly stated that, to prevent all cavil, they annulled these sales under section 5, Regulation XXVI. 1802, according to which, the authority of the Board of Revenue is necessary before the sale of lands of defaulting proprietors can be legally effected.

The Government, under date the 11th July 1826, entirely approved and confirmed these proceedings. They considered such purchases by the revenue servants or their connexions as tending "to facilitate the oppression of the landowners; to spread corruption amongst the revenue servants, and to destroy the confidence of the people in the protection of Government;" and made, as they had been, in defiance of the express enactments in the Regulations, repeatedly published by the local authorities as applicable to Tanjore, the example was obviously called for to check the organization of a system of fraud and oppression openly denounced by Government.

Para. 4.

It is now given as the opinion of the Board of Revenue, that "the sales in question cannot legally be annulled for want of their sanction, because it has been declared by the judges of the Sudder Adawlut, that the provisions of Regulation XXVI. of 1802 are applicable only to lands assessed in perpetuity, under Regulation XXV. 1802."

Para. 3 of Proceedings, dated 26 November 1829.

The proceedings of the Court of Sudder Adawlut, containing this opinion, were submitted to Government in their register's letter of the 30th June last.

It would certainly appear, as stated in the proceedings in question, that from section 6 to 15, Regulation XXVI. 1802, is applicable exclusively to lands assessed in perpetuity under Regulation XXV. 1802. But there is nothing contained in that law, or in any other part of the code, to show that the other sections of that Regulation which are couched in general terms, are confined to lands so assessed. On the contrary, the title and preamble to Regulation XXVI. 1802, are perfectly general; and so are sections 2 to 5, and sections 12 to 21 inclusive, being the greater proportion of its provisions. There is no doubt that in Tanjore, Malabar, Canara, and other districts, extensive sales of land have taken place under

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under the provisions of this very law; and it is of as much importance that, where they have been in conformity with that law, they should not now be annulled, as it is that, where they have been contrary to it, they should not now be confirmed, by construing those sections of the Regulation in question, which are couched in general terms, as inapplicable to particular districts. It is also obvious that it must have been the decided intention of the Government to prohibit the sale of lands for arrears of revenue, except under the express sanction of the Board of Revenue, and the purchase of such lands by defaulters, their sureties, Europeans, or revenue officers, as much in unsettled as in settled districts.

The justice and policy of the general enactments on these heads were confined to no particular locality, and in Tanjore in particular they were repeatedly proclaimed throughout the province as applicable to it.

The enactment in question was taken originally from the Bengal Code; and there the sale of land without the sanction of the Board of Revenue, as well as the purchase of it by native revenue servants when sold publicly for arrears, have always been deemed illegal. Indeed it was there further maintained by some that the sale, though previously authorized by the Board, was incomplete until subsequently confirmed by them, and this has been since declared to be the law. In the third volume of the Revenue Selections, the Supreme Government state
Para. 391. that "much embarrassment has been frequently experienced from doubts attaching to the authority of the superior revenue authorities in regard to the annulment of sales." "In the lower provinces," they observe, "the Board of Revenue has generally considered itself debarred from exercising any discretion in cases wherein there had occurred no legal irregularity*, however harsh or impolitic the sale might have been. In the western provinces, fortunately for the people, the Board acted on an opposite construction of their powers, holding, on grounds of doubtful validity, that the sale was absolutely incomplete until confirmed by the superintending Board."

It is then added that, to correct these inconveniences, Regulation XI. 1822 had been passed by the Supreme Government, and section 5 of it, detailing the conditions necessary to give validity to a sale, declares one of the principal of them to be, that permission to sell shall have been received from the Board of Revenue. In clause 3, section 6, it is expressly declared that "no sale, whether made before or after the promulgation of this Regulation," shall be liable to be "annulled on the ground" of informality, &c., provided that the Board of Revenue shall have actually given authority to proceed to the sale of the specific "lot sold;" but if they had not given such authority, as was precisely the case in Tanjore, it is evident that in Bengal the sale, even though it occurred before the promulgation of that law, would still be liable to be annulled. It is then newly provided by section 24, that before possession can be assumed of estates sold, the sale must not only have been previously authorized, but after it has actually taken place, must be confirmed by the Board; and it is added in clause 3, that "the order of the Board of Revenue for annulling a sale, on whatever ground founded, shall be conclusive."

Accordingly, the construction to be given to the sections of Regulation XXVI. 1802, which are of general application, is fully borne out by this declaratory enactment in the Bengal Code, whence it was taken. The intention of this Government was evidently to check abuse generally, not in settled districts only; and if the Court of Sudder Adawlut adhere to the construction given by them to Regulation XXVI. of 1802, it will be necessary, in order to render valid the numerous sales in Malabar, Canara, Tanjore, and elsewhere, which have taken place under that law, and to correct the abuses in Tanjore arising from its infringement, that a declaratory Regulation be issued, explaining such to have been the intentions of the Government.

It is remarkable, that in Bengal, the most extensive abuses from the purchase of lands sold for arrears of revenue by the native revenue officers or their connexions, took place in the unsettled districts in the Ceded Provinces, and they there extended to so great an evil as to call for the nomination of a special commission

* In the instance of Tanjore there was the greatest legal irregularity, viz. sale without the previous authority of the Board.

commission to undo the wrong that had been committed, as explained in the preamble to Regulation I. 1821, in the Bengal Code. This, as shown by the Board of Revenue in their proceedings of the 19th June 1826, is now the second time that such an abuse has arisen in Tanjore; and the Government would expose the inhabitants of that province to such wrongs without redress if they did not now interfere decidedly to show that their enactments are not to be infringed or evaded by their native servants with impunity.

For the reasons stated in the foregoing of these proceedings, resolved, that the Order of Government, dated 19th June 1826, directing certain lands in the province of Tanjore, which had been irregularly sold for arrears of revenue, to be restored to their former proprietors, be not revoked, and that the principal collector of Tanjore be directed through the Board of Revenue to give immediate effect to it.

From the Chief Secretary to the Government of Fort St. George to the Judges of the Sudder Adawlut, dated 21 October 1830.

Gentlemen,

With reference to your register's letter of the 30th June last, No. 83, I am directed by the Right hon. the Governor in Council to transmit for your information and guidance the accompanying extract from the Minutes of Consultation under this date.

I have, &c.
(signed) *H. Chamier*,
Secretary to Government.

(No. 66.)

From *W. Hudleston*, Esq. Register, to the Secretary to Government in the Judicial Department.

Sir, Sudder Adawlut Register's Office, 25 April 1831.

I am directed by the Judges of the Court of Sudder Adawlut to acknowledge the receipt of your letter, No. 939, dated 21st October last, with the extract from the Minutes of Consultation therein mentioned, wherein it is declared that "the intention of this Government was evidently to check abuse generally, not in settled districts only," and that "if the Court of Sudder Adawlut adhere to the construction given by them to Regulation XXVI. of 1802, it will be necessary, in order to render valid the numerous sales in Malabar, Canara, Tanjore, and elsewhere, which have taken place under the law, and to correct the abuses in Tanjore arising from its infringement, that a declaratory Regulation be issued explaining such to have been the intentions of the Government."

2. The grounds for the opinion of the judges, that "Regulation XXVI. of 1802, is applicable exclusively to lands assessed in perpetuity under the provisions of Regulation XXV. of 1802," are stated at large in the proceedings of the court, under date 10th August 1827, of which I am directed to submit a copy to be laid before the Right honourable the Governor in Council.

3. The judges, after the most mature consideration, adhere to that construction; it appears to them to be necessarily inferrible from the provisions of section 9 that those contained in sections 4 and 5 of the Regulation could not have been intended to apply to sales of land generally, but referred only to lands held under the provisions of Regulation XXV. of 1802.

4. The universal application of the provisions of sections 4 and 5, Regulation XXVI. of 1802, in the manner proposed, by a declaratory Regulation, would appear to be inconsistent with those provisions of Regulation VI. of 1816, which authorize district moonsiffs to sell and transfer land, and would go to invalidate all sales of land which have been made by the courts of Adawlut in execution of their decrees, excepting when such sales may have been effected through the collectors, a consequence of the proposed law involving the utmost confusion and distress.

5. The Judges of the Court of Sudder Adawlut resolve, therefore, respectfully to submit their recommendation that the declaratory regulation, if enacted, should give general operation only to the provisions contained in section 20, Regulation XXVI. of 1802.

(signed) *W. Hudleston*, Register.

No. 7.
On Stamps.

(No. 1236.)

From *T. R. Wheatley*, Esq. Secretary to Government, to the Judges of the Sudder Adawlut.

Gentlemen, Fort St. George, 30 December 1835.

I AM directed to acknowledge the receipt of your letter, No. 66, dated 25th April last, submitting your opinion in reply to an extract from the Minutes of Consultation of the 21st October 1830, respecting the bearing and construction of Regulations XXV. and XXVI. of 1802.

2. The sentiments of the Government upon the subject having been transmitted to you in an extract from the Minutes of Consultation under date the 21st October 1830, it is unnecessary now to recapitulate them; it will therefore be sufficient to dispose of the subject by a few brief observations.

3. There can be no undue severity in passing a declaratory enactment for the purpose specified, since it must be borne in mind that section 60, Regulation II. of 1803, prohibits collectors from permitting their native servants to be concerned directly or indirectly in any rent or farm of the public revenue, or to be security for any farmer or renter of lands on which the rent may not have been permanently fixed.

4. It seems impossible to suppose that the Legislature meant this prohibition to operate only upon the collectors, and not upon their servants; that it was intended as a mere direction to the higher officers, while their servants might act with impunity in contravention of it whenever an opportunity offered.

5. It must be observed that in section 60 the public revenue, in the rent or farm of which collectors are prohibited from permitting their native servants to be concerned, is the public revenue of lands not permanently assessed; but whatever may be understood by the direct or indirect interference of a native servant in the rent or farm of the public revenue, it is quite clear that he cannot purchase land sold for arrears without infringing that section; for, from the moment he becomes a purchaser of such land, he becomes likewise concerned in the rent or farm of the public revenue; it is therefore plain, in the opinion of the Right honourable the Governor in Council, that the intent of the Legislature in passing this section was to protect the land revenue from being converted into a source of fraudulent traffic, and it is obvious that the provision would have effectually answered the purpose intended if the collectors had strictly adhered to it; wherefore no native officer purchasing lands sold for arrears of public revenue, could possibly be ignorant that he was contravening the provisions of the law; there can be no injustice or hardship in a Regulation declaratory of what the intentions of the Legislature were, and giving it a retrospective effect.

6. Upon further consideration, the Right honourable the Governor in Council is satisfied that it is not necessary to consider Regulation XXVI. of 1802 applicable to unsettled as well as settled districts, in order to give validity to the sales of land which have taken place for arrears of revenue in Malabar, Canara, Tanjore, and elsewhere. The Sudder Court, in their proceedings of the 12th March 1829, decided that the provisions of Regulation XXVII. of 1802 were applicable to the recovery of arrears of public revenue payable by proprietors or farmers immediately to the collector or other public officers of Government, under settlements permanent or temporary. Section 6 of Regulation expressly declares the land to be the security of the public revenue, and it only leaves to the defaulter the option of yielding up his personal property for the discharge of his debt in preference to the sale of his lands; but to obviate all possibility of the occurrence of the disorders contemplated by the Sudder Adawlut, it will be sufficient to pass a Regulation giving general retrospective effect only to section 20, Regulation XXVI. 1802, as recommended by you.

7. The Right honourable the Governor in Council is of opinion that no land paying revenue ought to be sold for arrears, or in satisfaction of decrees, without the cognizance of the collector acting under the orders of the Board of Revenue; the judges and moonsiffs may be authorised to send to the collector a list of such as may be ordered to be disposed of in satisfaction of decrees in their courts, and the execution should be stayed until the receipt of sanction from the Board of Revenue,

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Revenue, which will of course not be withheld except for urgent and special reasons; perhaps it may be objected to this measure, that it would create delay, and that it would throw an additional labour upon collectors and the Board of Revenue. The delay ought never to extend beyond a few days, because in most applications the sanction will be a mere matter of form, and the sales are not likely to be of that number as to create any great additional labour. Where large landed property is sold, the Right honourable the Governor in Council is of opinion that such a sanction is necessary to the security of landholders, and to prevent improper transfers; and in unsettled districts the lands for the most part occupied by ryots are only gradually growing, by favourable circumstances, into that value which constitutes private property; it is therefore doubly incumbent upon the Government to see that the rights of such property are carefully protected.

8. You will be pleased to prepare and submit the draft of a Regulation expressive of the above intentions of Government, and likewise add to it such rules as you may consider necessary for regulating the process to be observed in the sale of lands in unsettled districts, to be substituted for those contained from sections 6 to 11, Regulation XXVI. of 1802, but without restricting the portion saleable to any limitation as to extent or value. These provisions may, of course, all be comprised in the same draft.

(signed) *T. R. Wheatley*,
Secretary to Government.

(No. 3.)

From *D. Eliott*, Esq. Acting Register, to the Acting Secretary to the Government, in the Judicial Department.

Sir, Sudder Adawlut Register's Office, 10 January 1832.

1. I AM directed by the Judges of the Court of Sudder Adawlut to acknowledge the receipt of your letter, No. 1236, dated the 30th ultimo, and with reference to the observations and instructions contained in paras. 7 and 8, to solicit explicit directions for their guidance in preparing the draft of the proposed Regulation upon the following points.

2. The judges request to be informed whether by this paragraph it is intended to extend to unsettled districts, as suggested in the 7th para. of the proceedings of the court, dated the 16th April 1829, the provisions of section 4, Regulation XXVI. of 1802, and those of section 5 of that Regulation, or merely to require the judicial officers to give notice of sales to the collector, and await the sanction of the Board of Revenue. Para. 7.

3. Lands attached in satisfaction of arrears of public revenue in unsettled districts, being saleable under the provisions of Regulation XXVII. of 1802, the Judges request to be informed whether the rules which by this para. they are instructed to frame for regulating the process to be observed in the sale of lands in unsettled districts, are to apply to lands attached for arrears of public revenue only, or to lands attached in execution of decrees. Para. 8.

4. It appears to the judges that the provisions of the proposed Regulation are so intimately connected with the question of the extended registry of lands and deeds, upon which the opinion of the Board of Revenue was solicited under date the 16th April 1829, that it is highly desirable that the same opportunity should be taken of enacting such provisions on those points as may appear expedient to the Right honourable the Governor in Council.

5. In the interim it may perhaps be expedient that a Regulation should be passed, giving general retrospective effect to the provisions of section 20, Regulation XXVI. of 1802, as directed in paragraph 6 of your letter.

(signed) *D. Eliott*, Acting Register.

No. 7.
On Stamps.

(No. 74.)

From *T. R. Wheatley*, Esq. Secretary to Government, to the Judges of the Sudder Adawlut.

Gentlemen, Fort St. George, 25 January 1832.

1. I AM directed to acknowledge the receipt of your acting register's letter of the 10th instant, and to communicate to you the following observations.

2. The Right honourable the Governor in Council is of opinion that in accordance with the observations of the Sudder Adawlut, noted in the 7th paragraph of their proceedings of the 16th April 1829, the provisions of sections 4 and 5, Regulation XXVI. of 1802, should be extended to unsettled districts as suggested.

3. In reply to the 3d paragraph of your letter, the Right honourable the Governor in Council is of opinion that it would be expedient to confine the rules enacted under the proposed Regulation to the recovery of arrears of public revenue; it would, however, be desirable that consideration of this part of the subject should be deferred until you receive the sentiments of the Board of Revenue upon the question of the extended registry of lands and deeds; in the meantime you will be pleased to prepare the draft of a Regulation, giving retrospective effect to the provisions of section 20, Regulation XXVI. of 1802.

(signed) *T. R. Wheatley*, Secretary to Government.

(No. 20.)

From *D. Eliott*, Esq. Acting Register to the Secretary to Government in the Judicial Department.

Sir, Sudder Adawlut Register's Office, 8 February 1832.

I AM directed by the Judges of the Court of Sudder Adawlut to acknowledge the receipt of your letter, No. 74, dated the 25th ultimo, and with reference to the instructions contained in the 3d paragraph, to submit the accompanying draft of a Regulation for declaring the true intent and meaning of section 20, Regulation XXVI. of 1802.

(signed) *D. Eliott*, Acting Register.

A REGULATION, explaining the true Intent and Meaning of Section 20, Regulation XXVI. A.D. 1802, as far as it declares Native Officers or Private Servants of Collectors incompetent to purchase Land sold at Public Sale.

Preamble.

WHEREAS doubts have arisen whether it was intended by section 20, Regulation XXVI. A.D. 1802, to preclude native officers and private servants of collectors purchasing at public sale lands of every description sold in the zillahs where they may be respectively employed, or whether it had reference exclusively to lands held under Regulation XXV. of 1802, it has become necessary to remove those doubts by a legislative enactment.

2. It is hereby declared, that the provisions of section 20, Regulation XXVI. A.D. 1802, were and are applicable to lands of every description sold at public sale by or under the orders of a collector.

(signed) *D. Eliott*, Acting Register.

(No. 2207.)

From *J. Thomason*, Esq. Deputy Secretary to Government, Fort William, to *H. Chamier*, Esq. Chief Secretary to Government, Fort St. George.

Sir, Fort William, 13 December 1831.

WITH reference to your letter, under date the 14th October last, I am directed to transmit to you the accompanying copy of a letter from the Secretary to the Governor-general, dated 26th ultimo, and to request that you will lay the same before the Government at Fort St. George.

(signed) *J. Thomason*, Deputy Secretary to Government.

No. 7.
On Stamps.

(Copy.)

From *W. H. Macnaghten*, Esq. Secretary to the Governor-general, to *James Thomason*, Esq. Deputy Secretary to Government, Judicial Department.

Sir, Camp, Beerchupper, 26 November 1831.

I AM directed by the Right honourable the Governor-general to acknowledge the receipt of your letter, dated the 1st instant, with its enclosures, on the subject of the Regulations proposed by the Government of Fort St. George, to provide for the punishment of false allegations in petitions to the judicial courts, and fictitious claims to property attached in execution of decrees, and "to provide more effectually for the office of registers of deeds."

2. On the subject of the first-mentioned draft, his Lordship directs me to observe that he is still of opinion that the power proposed to be conferred by section 2 is dangerous and liable to abuse. It is very true that any improper exercise of the power conferred on judicial officers to impose a penalty for false allegations in petitions to the courts may be repressed by the interference of superior authority; but the dread occasioned by the existence of such a power may deter individuals from making that unreserved statement of their grievances which is essential to the cause of justice. Without disputing the correctness of the construction pronounced by the Madras Sudder Court, his Lordship understands that the same point has been differently ruled under this presidency, and that any wanton aspersion on the conduct of the public functionaries has been visited as contempt of court, and held to be subject to the penalties prescribed for that offence.

3. The object of the rule contained in section 3 is not quite clear to his Lordship, inasmuch as the provision for punishing fictitious claims to property seems to be included in the previous section, prescribing the penalty for false allegations generally. As the evil which it is the object of this rule to suppress is represented to have attained an enormous height under the presidency of Fort St. George, his Lordship is by no means prepared to dispute the expediency of adopting extraordinary measures for its correction; but the second section of the proposed Regulation would seem to be sufficient for this purpose, and to the enactment of that rule his Lordship is not aware of any objection but the one already stated, and which has been mentioned for the consideration of the Madras authorities, not as intending the prohibition of the proposed enactment.

4. His Lordship directs me to take this opportunity of noticing a provision contained in the 6th section of the proposed Regulation to provide more effectually for the office of register of deeds, which is to the effect, that when covenanted officers shall perform the business of registry, they shall receive the authorized fees; but that when the duty is performed by native judges, these fees are to be carried to the credit of Government. The justice of this distinction is not obvious to his Lordship, and he is of opinion that if it be considered proper to assign the duty of registering deeds to the officers in question, they should also be held entitled to the profits usually annexed to it.

5. You are requested to forward a copy of this communication to the Government of Fort St. George, together with the original documents which accompanied your letter, and which are herewith returned for that purpose.

(signed) *W. H. Macnaghten*,
Secretary to the Governor-general.

(No. 30.)

From *T. R. Wheatley*, Esq. Secretary to Government, to the Judges of the Suddur Adawlut.

Gentlemen, Fort St. George, 13 January 1842.

I AM directed to transmit for your information copy of a letter from the Deputy-secretary to the Supreme Government, giving cover to one from Mr. Macnaghten, which contains some observations upon your Register's letter, No. 476, of the 4th October last.

2. In considering the provisions of the Regulation adverted to in these letters, the Right honourable the Governor in Council requests your attention to the remarks

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remarks in the 4th paragraph of Mr. Macnaghten's address, and is of opinion that it would probably be expedient to adopt the suggestion of the Right honourable the Governor-general that the native judge, on exercising the duty of registering deeds, should be entitled to the authorized fee annexed to it.

(signed) *T. R. Wheatley*, Secretary to Government.

(No. 11.)

From *D. Eliott*, Esq. Acting Register, to the Acting Secretary to Government in the Judicial Department.

Sir, Sudder Adawlut Register's Office, 23 January 1832.

1. I AM directed by the Judges of the Court of Sudder Adawlut to acknowledge the receipt of your letter of the 13th instant, with the accompanying copies of letters from the Deputy-secretary to the Government at Fort William, and the Secretary to the Governor-general.

2. The letter from the Secretary to the Governor-general contains the observations of his Lordship upon the drafts of Regulations submitted by the Sudder Adawlut to Government, under date the 21st June last, with reference to the explanations relating thereto afforded in the register's letter dated the 4th October last.

3. His Lordship does not prohibit the proposed enactment of a Regulation "to provide for the punishment of false allegations in petitions to the judicial courts, and fictitious claims to property attached in execution of decrees," but suggests certain objections to the proposed provisions for the consideration of the Madras authorities.

4. With the view of obviating the objection suggested by his Lordship, the Court have prepared a modified draft, herewith submitted, in which the provision for punishing fictitious claims to property attached in execution of decrees, which in the former draft stood in a separate section, is included in the section which provides for the punishment of false allegations in petitions to the courts, and the general provision is rendered more distinct and precise, in order more strictly to limit the exercise of the power conferred on judicial officers.

5. The draft thus amended the Court trust will meet with the approbation of the Right honourable the Governor in Council.

6. With reference to section 6 of the draft of Regulation "to provide more effectually for the office of register of deeds," it is remarked that the reason is not obvious why the authorized fees for registration should not be allowed to native judges when they perform that business, while they are allowed to covenanted officers; and the opinion of his Lordship is expressed that if it be considered proper to assign the duty of registering deeds to the officers in question, they should also be held entitled to the profits usually annexed to it.

7. The Court beg to observe that the distinction here noticed is not confined to native judges, but applies generally to zillah assistant and native judges, it being provided that when any of those officers may perform the duty of register, the net amount of the fees shall be carried to the account of Government, they being considered as of one class and as receiving fixed salaries, not entitled to any extra emolument for the performance of any duties assigned to them officially. Registers in general, in common with sudder ameens and moonsiffs, being partly paid by fees, it was thought proper likewise to allow the authorized fees for registering deeds to a covenanted officer specially appointed, under the provisions of the Regulation, as deputy or officiating register. The same distinction is made in the Bengal Regulation IV. of 1824. The sum to which these fees amount monthly is very inconsiderable; and as the Regulation has been printed and published (which apparently was not known to the Governor-general) it may be deemed unnecessary to alter it.

Regulation XI. of 831.

(signed) *D. Eliott*, Acting Register.

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A Regulation to provide for the Punishment of False Allegations in Petitions to the Judicial Courts and Fictitious Claims to Property attached in Execution of Decrees.

Whereas it is considered to be highly expedient and necessary that provision should be made for the punishment of persons making false allegations in petitions addressed to the judicial courts, and setting up fictitious claims to property attached in satisfaction of decrees; wherefore the following rules have been enacted to be in force from the date of their promulgation. Preamble.

II. Any person who shall set up a fictitious claim to property attached in satisfaction of a decree of a judicial court, or who may introduce a false allegation or allegations into a petition presented to a provincial court, or to the court of the zillah assistant or native judge, with a fraudulent design, shall be punishable to the extent provided in section 22, Regulation III. of 1802.

(signed) *D. Eliott*, Acting Register.

(No. 92.)

From *W. Hudleston*, Esq. Register to the Acting Chief Secretary to Government.

Sir, Sudder Adawlut Register's Office, 3 June 1831.

With reference to my predecessor's letter, No. 83, dated 30 June 1830, I am directed by the Judges of the Court of Sudder Adawlut to state that no answer has yet been received to the communication made on that date to the Board of Revenue, soliciting a reply to a reference made to that Board on the 16th April 1829, on the subject of an extended and modified registry for deeds, and the extension to unsettled districts of the provisions of Regulation XXVI. of 1802.

Representations, however, which have been made to the judges regarding the inconvenience experienced in districts when a zillah register may not happen to be present, as also in the districts subject to the jurisdiction of the auxiliary courts, induce them to submit the accompanying draft of a Regulation, containing, *mutatis mutandis*, the provisions enacted with the same view in Bengal Regulation IV. of 1824, to which they have added provisions, the adoption of which they respectfully recommend as expedient and indeed necessary for the punishment of false allegations in petitions to the courts, and fictitious claims to property attached in execution of decrees.

3. The communications on the two latter points are voluminous, and the judges on that account abstain from forwarding them, unless they should be required by the Right honourable the Governor in Council.

(signed) *W. Hudleston*, Register.

A Regulation to provide more effectually for the Office of Register of Deeds, and for the Punishment of False Allegations in Petitions to the Judicial Courts, and Fictitious Claims to Property attached in Execution of Decrees.

By section 15, Regulation XVII. of 1802, the several zillah registers are permitted, in case of absence from their stations, sickness, or any other disqualification from personal attendance to the duties of their office, to appoint, with the approbation of the judge to whom they may be registers respectively, a deputy, being a covenanted servant of the Company, and duly qualified, to act for them, and such deputy so appointed and approved, after taking a similar oath to that prescribed for the register, is authorized to perform the several acts which the register is by that Regulation empowered to perform; but much inconvenience has been experienced by the community in consequence of vacancies in the office of zillah register, and the protracted absence of registers who may not have appointed deputies in the mode prescribed, and of there being no provision for the registry of deeds at the stations of the auxiliary courts and those of the native judges. It is also considered to be highly expedient and necessary that provision should be made for the punishment of persons making false allegations in Preamble.

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in petitions addressed to the judicial courts, and setting up fictitious claims to property attached in satisfaction of decrees. Wherefore the following rules have therefore been enacted to be in force from the date of their promulgation.

If register vested with superintendence of the office be absent from his station and have not appointed a deputy, the judge authorized to appoint one.

2. Whenever a register vested with the superintendence of the registry office may be absent from his station without having appointed a deputy in pursuance of the provisions of section 15, Regulation XVII. of 1802, the zillah judge is hereby authorized to appoint some duly qualified covenanted servant of the Company to act as deputy register of deeds, and the deputy so appointed, after being duly sworn, shall be authorized to perform the prescribed duties of the offices.

Judge shall appoint a qualified person, being a covenanted servant, to act as register of deeds when from a vacancy in the office of register a deputy cannot be appointed.

3. It shall also be the duty of the zillah judge to appoint a qualified person, being a covenanted servant of the company, to officiate as register of deeds, whenever, from a vacancy in the office of register, the nomination of a deputy cannot take effect agreeably to the preceding section.

If there be no qualified person at the station, the judge is authorized and required to perform the duty.

4. In the event of there being no covenanted servant at the station to whom, in the cases mentioned in the two preceding sections, the judge may deem it proper to confide the office of registering deeds, he is himself hereby authorized and required to perform the prescribed duties of the office.

Assistant and native judges authorized and required to perform the duties of register of deeds. Deputy or acting register to receive the fees.

5. Assistant and native judges are hereby authorized and required to perform the duties of register of deeds, as prescribed in Regulation XVII. of 1802.

Fees to be carried to the credit of government when zillah assistant or native judge shall register deeds.

6. The deputy or officiating register appointed under the provisions of this Regulation shall receive, during the time of his officiating, the authorized fees; but whenever the zillah assistant or native judge may perform the duty, the net amount of such fees, after defraying the necessary expense of the establishment, shall be carried to the credit of Government.

Penalty for false allegations in petitions to the court.

7. Any person who may introduce a false allegation or allegations into a petition presented to a provincial court, or to the court of the zillah assistant or native judge, shall be punishable to the extent provided in section 22, Regulation III. 1802.

Penalty for fictitious claims to property attached in satisfaction of a decree.

8. Any person who shall set up a fictitious claim to property attached in satisfaction of a decree of a judicial court, shall be punishable to the extent prescribed in section 9, Regulation II. 1802.

(signed) *W. Hudleston*, Register.

(No. 369.)

From *H. Chamier*, Esq. Acting Secretary to Government, to the Judges of the Sudder Adawlut.

Gentlemen, Fort St. George, 14 June 1831.

I AM directed to acknowledge the receipt of your register's letter of the 3d instant, No. 92, and to state that the Right honourable the Governor in Council considers it desirable that the provisions contained in sections 7 and 8 of the draft Regulation therewith submitted, should be enacted either in separate Regulations, or in Regulations in which they may be more appropriately embodied than in one having reference to the office of register of deeds, and requests that the draft in question may be modified accordingly.

(signed) *H. Chamier*,
Acting Secretary to Government.

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On Stamps.

From *W. Hudleston*, Esq. Register, to the Acting Chief Secretary to Government.

Sir, Sudder Adawlut Register's Office, 21 June 1831.

Para. 1. I AM directed by the Judges of the Court of Sudder Adawlut to acknowledge the receipt of your letter, No. 369, dated 14th instant, and to submit drafts of two Regulations, containing the provisions which were embodied in the draft which accompanied my letter of the 3d instant.

2. The judges have adopted this course to avoid delay, and also because they do not expect that an opportunity will offer of introducing the provisions of sections 7 and 8 of the former draft into a more appropriate Regulation.

(signed) *W. Hudleston*, Register.

A REGULATION to provide more effectually for the Office of Register of Deeds.

Preamble.

BY section 15, Regulation XVII. of 1802, the several registers are permitted, in case of absence from their stations, sickness, or any other disqualification from personal attendance to the duties of their office, to appoint, with the approbation of the judge to whom they may be registers respectively, a deputy, being a covenanted servant of the Company, and duly qualified to act for them; and such deputy so appointed and approved, after taking a similar oath to that prescribed for the register, is authorized to perform the several acts which the register is by that Regulation empowered to perform; but much inconvenience has been experienced by the community in consequence of vacancies in the office of zillah register, and the protracted absence of registers who may not have appointed a deputy in the mode prescribed, and of there being no provision for the registry of deeds at the stations of the auxiliary courts, and those of the native judges: wherefore the following rules have been enacted to be in force from the date of their promulgation.

If a register vested with superintendence of the office be absent from his station, and have not appointed a deputy, the judge authorized to appoint one.

2. Whenever a register vested with the superintendence of the registry office may be absent from his station, without having appointed a deputy, in pursuance of the provisions of section 15, Regulation XVII. of 1802, the zillah judge is hereby authorized to appoint some duly qualified covenanted servant of the Company to act as deputy register of deeds, and the deputy so appointed, after being duly sworn, shall be authorized to perform the prescribed duties of the office.

Judge shall appoint a qualified person, being a covenanted servant, to act as register of deeds, when, from a vacancy in the office of register, a deputy cannot be appointed.

3. It shall also be the duty of the zillah judge to appoint a qualified person, being a covenanted servant of the Company, to officiate as register of deeds, whenever from a vacancy in the office of register, the nomination of a deputy cannot take effect agreeably to the preceding section.

If there be no qualified person at the station, the judge is authorized and required to perform the duty.

4. In the event of there being no covenanted servant at the station to whom, in the cases mentioned in the two preceding sections, the judge may deem it proper to confide the office of registering deeds, he is himself hereby authorized and required to perform the prescribed duties of the office.

Assistant and native judges authorized and required to perform the duties of registrar of deeds.

5. Assistant and native judges are hereby authorized and required to perform the duties of register of deeds, as prescribed in Regulation XVII. of 1802.

Deputy or acting registrar to receive the fees.

6. The deputy or officiating register appointed under the provisions of the Regulation shall receive, during the time of his officiating, the authorized fees; but whenever the zillah assistant or native judge may perform the duty, the net amount of such fees, after defraying the necessary expense of the establishment, shall be carried to the credit of Government.

Fees to be carried to the credit of Government when zillah assistant or native judge shall register deeds.

(signed) *W. Hudleston*, Register.

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On Stamps.

A REGULATION to provide for the Punishment of False Allegations in Petitions to the Judicial Courts, and Fictitious Claims to Property attached in Execution of Decrees.

Preamble.

WHEREAS it is considered to be highly expedient and necessary that provision should be made for the punishment of persons making false allegations in petitions addressed to the Sudder Court, and setting up fictitious claims to property attached in satisfaction of decrees: wherefore the following rules have been enacted to be in force from the date of their promulgation.

Penalty for false allegations in petitions to the court.

2. Any person who may introduce a false allegation or allegations into a petition presented to a provincial court, or to the court of the zillah assistant or native judge, shall be punishable to the extent provided in section 22, Regulation III. of 1802.

Penalty for fictitious claims to property attached in satisfaction of a decree.

3. Any person who shall set up a fictitious claim to property attached in satisfaction of a decree of a judicial court, shall be punishable to the extent prescribed in section 9, Regulation II. of 1802.

(signed) *W. Hudleston*, Register.

(No. 1,537.)

From *J. Thomason*, Esq. Deputy Secretary to Government, to *H. Chamier*, Esq. Chief Secretary to Government at Fort St. George.

Sir,

Fort William, 30 August 1831.

Judicial Department.

I AM directed to acknowledge the receipt of your letter, dated the 1st ultimo, transmitting copies of two Regulations proposed to be enacted at Fort St. George, and in reply to forward to you, and to request that you will lay before the Right honourable the Governor in Council, the accompanying copy of a letter, dated the 10th instant, written by the Secretary to the Governor-general, and conveying his Lordship's sentiments on the Regulations in question.

(signed) *J. Thomason*,
Deputy Secretary to Government.

From *W. H. Macnaghten*, Esq. Secretary to Governor-general, to *J. Thomason*, Esq. Deputy Secretary to Government, Judicial Department.

Sir,

Simla, 10 August 1831.

I AM desired by the Right honourable the Governor-general to acknowledge the receipt of your letter, dated the 19th ultimo, with its accompanying letter from the acting secretary at Fort St. George, and drafts of two Regulations proposed to be enacted at that presidency.

2. The draft of the Regulation to provide more effectually for the office of register of deeds, appears to his Lordship to be unobjectionable, and is similar in purport to a corresponding enactment (IV. of 1824) in force at this presidency.

3. The propriety, however, is not so obvious of the rules proposed to provide for the punishment of false allegations in petitions to the judicial courts, and fictitious claims to property attached in execution of decrees.

4. Previously to forming any opinion on the enactment proposed for the above purposes, his Lordship desires me to request that a reference may be made to the Government of Fort St. George, with a view to ascertain the circumstances which suggested its expediency, and the particular description of petitions referred to in section 2 of the draft. Under the rules which obtain at this presidency, a suit which shall appear to be frivolous, vexatious or groundless, is to be dismissed and the suitor fined. The principle appears to be equitable from its being calculated no less to save the courts from the needless occupation of their time, than to protect individuals from the inconvenience and harassment attending the refutation of false claims. His Lordship understands, however, that this penal rule is seldom

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seldom enforced in civil cases, and he doubts the propriety of extending the principle to all miscellaneous petitions indiscriminately, which may be presented to a civil court, or of declaring that a petitioner shall be liable to be proceeded against criminally, if he present a petition containing one false allegation, which may be interpreted to extend to any exaggerated averment, though uttered without any fraudulent design, and though unattended with any injurious consequences.

5. The Bengal Regulations contain no penalty for fictitious claims to property attached in execution of a decree. By clause 6, section 3, Regulation VII. of 1825, where a fraudulent design is evident, it is declared that the sale shall not be postponed, and that the claimant shall be left to prosecute his claim after the sale by a regular civil suit. This provision is apparently adequate to the purpose in view; for under the rule of 1793, section 12, Regulation III. the false claimant is punishable should he proceed to a regular suit. By the proposed rule for Madras, it would appear to be the object not only to reject the claim, but to inflict a fine in a summary investigation. His Lordship begs leave to suggest that the Madras Government be requested to state the reasons which have induced the necessity of enacting this penalty, and whether the same object might not be effected by the course of proceeding directed to be adopted in similar cases at this presidency.

6. By the above observations it is by no means the intention of his Lordship to prejudge the question. On the contrary, he is quite prepared to admit that the result of the suggested reference may prove the propriety of the proposed rules; but in that case it will remain for consideration whether it would not be expedient to introduce similar provisions at this presidency. Indeed his Lordship has all along been of opinion that the chief advantage attending the system which now prevails with regard to drafts of Regulations, is to secure, as far as local peculiarities will permit, an uniformity of legislation in the orders of the three presidencies.

7. The original enclosures of your letter are herewith returned.

(signed) *W. H. Macnaghten,*
Secretary to the Governor-general.

(No. 574.)

From *H. Chamier,* Esq. Chief Secretary to the Judges of the Sudder Adawlut.

Gentlemen, Fort St. George, 20 September 1831

I am directed by the Right honourable the Governor in Council to transmit to you the accompanying copy of a letter from the deputy secretary to Government at Fort William, with a copy of its enclosure; and to request that you will furnish, in a convenient form, for communication to the Supreme Government, the information called for in the letter from the secretary to the Governor-general to the deputy secretary to Government at Fort William, dated 10th August. Dated 30 August 1831.

(signed) *H. Chamier,*
Chief Secretary.

(No. 131.)

From *G. F. Cherry,* Esq. Judge, Zillah Court.

Sir, Suddur Adawlut Register's Office, 4 October 1831.

I am directed by the Judges of the Court of Suddur Adawlut to acknowledge the receipt of your letter, No. 574, dated the 20th ultimo, transmitting the copy of a letter from the deputy secretary to Government at Fort William, with a copy of its enclosure, and desiring that they will furnish in a convenient form for communication to the Supreme Government, the information called for in the letter from the secretary to the Governor-general to the deputy secretary to the Government at Fort William, dated the 10th August 1831.

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2. Paragraph 4 of the letter from the secretary to the Governor-general refers to the provision contained in section 2 of the draft of a Regulation submitted by the judges, under date the 21st June last, for the punishment of false allegations in petitions addressed to the judicial courts.

3. His Lordship desires to be made acquainted with the circumstances which suggested the expediency of this provision, and the particular description of petitions referred to.

4. The judges observe that the rule cited in this part of the letter respecting frivolous, vexatious, or groundless suits, is contained in section 9, Regulation II. of 1802, in the code of this presidency, and they direct me to annex the copy of a minute recorded by the second judge of the provincial court of appeal in the western division, under date the 17th November 1824, which contains the information called for on this point by the Right honourable the Governor-general.

5. In forwarding this minute, the provincial court submitted a copy of the proceedings to which it immediately refers, and requested the opinion of the judges of the Sudder Adawlut on the question, " whether it is competent to a provincial court to punish as a contempt false and groundless imputations in a miscellaneous petition ?"

6. The judges of the Court of Sudder Adawlut were not of opinion that such cases could be brought within the scope of the provisions of section 22, Regulation III. of 1802, and on the 11th July 1827 the provincial court renewed the recommendation offered in Mr. Warden's minute.

7. The power which the judges have proposed to be conferred on the courts, of treating false allegations on petitions as contempts, should undoubtedly be exercised with caution and discrimination, and the interference of the superior courts would, in their opinion, effectually prevent the extension of the provision to any exaggerated averment uttered without a fraudulent design, and unattended with injurious consequences.

8. Paragraph 5 of the letter from the secretary to the Governor-general refers to the provision in section 3 of the draft for punishing fictitious claims to property attached in execution of a decree.

9. It is observed, that by clause 6, section 3, Regulation VII. of 1825 in the Bengal Code, where a fraudulent design is evident, it is declared that the sale shall not be postponed, and that the claimant shall be left to prosecute his claim after the sale by a regular civil suit.

10. His Lordship desires to be informed of the reasons which have induced the necessity of enacting the proposed penalty of a fine on a summary investigation, which is not considered to be requisite with reference to the provision for the punishment of the party, should he proceed to a regular suit.

11. On this subject, as mentioned in my letter, No. 92, dated the 3d June last, the communications made to the Court of Sudder Adawlut are voluminous, consisting of a series of representations from May 1817 to December 1828, from the several zillah and provincial courts, showing that the most injurious interruption to business has been occasioned by the practice universally prevalent of preferring fictitious and collusive claims to property so situated.

12. The judges direct me to state, that when a claim may be preferred to property attached for sale in execution of a decree, the course of proceeding established in Bengal obtains in the courts under this presidency; but that the rule quoted by his Lordship, from section 12, Regulation III. of 1793, has not here been found to operate in any degree as a check upon the institution of such groundless claims, inasmuch as the false claimant will not proceed to a regular suit, and under the Regulations as they now stand, he may harass the other party, and prevent the sale, pending an inquiry which may last for months, with impunity.

13. It is in consideration of the serious practical evils, so universally represented, that the judges of the Court of Sudder Adawlut have been induced to propose the enactment in question, and they are disposed to be of opinion that, as in the former case, the interference of the courts of appeal, when necessary, would prevent any undue exercise of the authority proposed to be conferred by this section.

(signed) *W. Hudleston*, Register.

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The Second Judge records the following Minute.

BESIDES the ordinary duties of the zillah courts in the investigation and decision of civil suits and criminal complaints, a very considerable portion of their time is occupied in hearing and disposing of miscellaneous petitions. The Regulations provide for the punishment of litigious suitors, notwithstanding they incur the expense of costs in bringing their causes to a regular inquiry; but no such provision is made against petitioners, who may harass the attention of the court by groundless claims and representations; the consequence of which is, that the regular business of the court is seriously impeded. Not only are such litigious and frivolous representations preferred with impunity, but they are exempt also from costs of every description, saving the stamp fee, which in a zillah court does not exceed half a rupee, and on petitions presented to the provincial court, not more than one rupee. To attract the notice of the provincial court, petitioners make no scruple in setting forth the most audacious and insolent imputations. To do them away by explanations, the judges of the zillah courts are often obliged to refer to voluminous papers, and though they may satisfactorily and fully establish the falsity of the allegations adduced against them or their servants, the provincial court can do no more than pass an order expressive of their opinion regarding them. It cannot be denied that the dignity of a court must suffer disparagement if a petitioner be allowed thus to distract its attention by false representations, without having the means of vindicating its authority by the power of punishment. The greater part of the miscellaneous petitions which are presented to the courts, relate to claims on property attached for the execution of decrees of court. No sooner is one disposed of than another succeeds. As an instance of the nature of these claims, I need only refer to the cause lately decreed by this court, in which the property contested had been for upwards of ten years in litigation before the zillah court after its first attachment in execution of a decree, in consequence of the various claims which were adduced, and which ultimately proved to be founded in collusion betwixt the claimants and the defendants against whom the decree was passed. I think it full time that this subject should receive the consideration of the judges of the Sudder Adawlut, who are already well enough informed of the weight of duty which the disposal of miscellaneous business imposes upon the courts in this division. And I avail myself of the opportunity that is afforded by the return which we have this day received from the zillah judge in Canara, to the precept which called upon him to report on the matters therein alluded to, to bring the subject forward, in order that it may be submitted to the Sudder Adawlut. We are agreed that the petitioner in this case deserves punishment for presuming to set forth in his petition the false representation it contains, impugning the legality of the sale of the property attached, which, after a patient and laborious inquiry, the judge ordered to be sold in execution of a decree of court; but we are doubtful whether his offence can, under the Regulations, be constructively denounced as a contempt of court as therein defined, and punished accordingly.

I have therefore to propose that this question be referred for the opinion of the Sudder Adawlut, with the recommendation that some penal rules be established for the purpose of checking the influx of false and litigious representations that are overwhelming the courts through the means of miscellaneous petitions.

17 November 1824. (signed) *Thomas Warden*, Second Judge.

The first judge concurs.

(A true copy.)
(signed) *W. B. Anderson*, Register.

(A true copy).
(signed) *W. Hudleston*, Register.

From *Geo. F. Cherry*, Esq. Judge of Zillah Court of Masulipatam, to the Register of the Court of Sudder Adawlut, Fort St. George.

Sir, Zillah Court, Masulipatam, 8 March 1822.

1. I CONSIDER it my duty to bring to the notice of the judges of the Sudder Court the extreme difficulty which attaches (in this zillah) to the execution of decrees in civil suits.

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2. I beg leave respectfully to submit copy of a letter from Mr. Tod (late judge) dated the 24th May 1817, on this subject, and to remark that I cannot ascertain whether any reply was given to it by the Sudder Court.

3. The evil alluded to by Mr. Tod appears subsequently to have gained very considerable strength, and has nearly become the means of frustrating the realization of any amount awarded by the courts, either European or native; no sooner is a suit brought to a decision, than the party cast indirectly contrives by some means to avoid the execution. Extra petition upon extra petition by individuals, (apparently not parties in the suit) pour in, claiming the attached property, some alleged to be on mortgage, some on bills of sale, and others again on division of family estates; every method which human invention is capable of contriving, is resorted to with the view of having the property brought to public sale. Each claimant wishes the zillah judge to examine his vouchers and witnesses, and to release his property, while the party (who has obtained the decree in his favour) alleges forgery, falsity, conspiracy, and many other reasons, and calls for a summary inquiry.

4. The orders of the provincial court, which apparently gave rise to this difficulty, are not (I believe) annulled to the present period. It would be useless for me to enter further on the subject, as the judges of the Sudder Court, by perusal of Mr. Tod's letter, will clearly perceive how futile all exertions or application on the part of the zillah judge must prove (without some special remedy) to counteract so confirmed and self-increasing an evil.

5. I trust, therefore, the Judges of the Sudder Court will pardon the liberty with which I bring the subject again to their notice, as I am almost confident, if a remedy is not speedily applied, that the judge, from the consolidation of two zillahs into one, will not be able to attend to any other business than the summary investigation of false claims against attached property; and which duty, from not appearing in the monthly abstracts, must render him liable to the charge of neglect, and disobedience of the orders of his superiors.

(signed) *George F. Cherry*, Judge.

From *J. O. Tod*, Esq. Judge of the Zillah Court of Masulipatam, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir, Zillah Court, Masulipatam, 24 May 1817.

I BEG leave to bring to the notice of the Sudder Adawlut the existence in this zillah of a great and increasing evil, for which I am in hope the court may be able to prescribe a remedy without framing a new Regulation.

The evil alluded to is, the presentation to the court of false claims, in the shape of extra petitions, by persons not being parties in suits to real and personal property when attached by the officers of the court in satisfaction of decrees; such claims being made under pretence that the property has been previously sold, mortgaged, transferred upon an alleged separation of the members of a Hindoo family, or given in pledge to the claimant.

The practice of this court formerly was, to refer all (or almost all) claims that might be put in to attached property to the summary investigation and decision of the nazir, who acted upon his own responsibility, he having been allowed at the time referred to, a commission of 6¼ per cent., covering all charges, on the amount proceeds of sales; and such were the facilities which he, as a native, possessed in arriving at the secret but certain knowledge of the real merits of these claims, that only one instance occurred of a person preferring a regular complaint against him, for having sold property alleged to be mortgaged to the complainant, and there is some reason to believe that even this single complaint was groundless, for it was dismissed by the register to whom it had been referred, and no appeal was ever made from his decision.

The Court of Sudder Adawlut, however, having some years ago determined that the nazir of a zillah court is not legally entitled to draw commission on sales in execution of decrees, it appeared unreasonable any longer to subject that officer (who receives but pagodas 10 per month salary) to the responsibility of deciding upon claims to attached property; and the Court had therefore recourse to the practice of requiring the claimants to produce at least their vouchers in open court,

court, and if these appeared to be fair, they were marked and signed, the claim was admitted, and the party at whose instance the property had been attached was left to seek redress by regular suit, if he complained, as was frequently the case, of fraud or forgery on the part of the claimant. In any case where the claim was deemed palpably false it was immediately rejected, but before selling the property in dispute sufficient time was in general allowed for an appeal to be made to the provincial court.

This practice had not been long in use before a new one was introduced by order of the provincial court. A person having complained by extra petition to that court that the zillah judge had, to his prejudice and loss, recognized as good a mortgage bond which had been put in to stop a sale, and which he offered to prove to be false, the provincial court, on the 20th February 1816, issued a precept to the zillah judge as follows: "On taking this petition into consideration, together with an extract from the proceedings of the zillah judge, under date the 30th December 1815, rejecting (petitioner's) motion, No. 546 of 1815, and directing him (petitioner) to file a suit against Muna Gala Sutruh, if he thinks his bond a forgery, the provincial court think it proper to record their opinion that in all cases where property ordered to be sold in execution of a decree may be claimed by a third person, either as having been sold to him, or as having been mortgaged to him, the zillah judge should himself make a summary investigation of the goodness of the claim, by vouchers and sworn witnesses, and decide accordingly, leaving the parties to seek redress by regular suit. In cases wherein the property may have been fairly mortgaged, it must nevertheless be sold, and the surplus, if any remain after satisfying the mortgage, must be appropriated to the liquidation of the amount of the decree. Under this view of the present petition, resolved, that the zillah judge of Masulipatam be furnished with a copy of the same, and extract from this day's proceedings, and that he be by precept required to make the investigation above referred to; and in future, in similar cases, to proceed in the same manner, certifying to this court what he may have done in the premises."

It may not be irrelevant to observe, by the way, that upon investigation in the manner directed, the petitioner's statement was found to be utterly false, and he himself the chief actor in a conspiracy to defraud a just mortgagee.

Admitting that the Regulations distinctly declare that the Sudder Adawlut "is empowered to prescribe the forms and conduct to be observed by the provincial and zillah courts," it may perhaps be doubted whether it is competent to a provincial court to lay down general rules for the guidance of a zillah judge in cases not provided for by the Regulations; and admitting that the Regulations minutely define the cases in which they permit summary investigations and decisions, perhaps it may be doubted whether the provincial court were perfectly regular in directing a summary investigation and decision in this particular case, which involved not only a claim to personal property, but also a serious charge of forgery.

Although strongly inclined to believe in the negative of both propositions, I did not at first object to conform to the provincial court's precept, with a view to a reference under Regulation XXII. 1802, because I could not specify any precise rule in the Regulation from which I considered their order to deviate; but I do now nevertheless think it my duty respectfully to bring that precept and its consequences to the notice of the Sudder Adawlut, to the end that I may not be blamed for the delay which I perceive must soon begin to take place in the decision of regular suits, from the overwhelming influx of applications for summary investigations, to determine the merits of claims put in to attached property.

Before the receipt of the precept in question a claim to attached property used to be put in only once or twice in two or three months. So much pleased, however, are the litigious and intriguing natives with these cheap summary investigations, that between the date of the precept and the present time, a period of about 15 months, the number of applications for them, filed before the judge alone, (and corresponding number of executions of decrees stopped), amounts to exactly thrice the number of regular suits triable by the judge only filed within the same period, whilst the extra petitions, which used formerly to amount to 30 or 40 in the month, have now increased to upwards of 80 in the month. These are accompanied in general by numerous documents, and by far the greater part of them are wholly on the subject of these false claims. The register has his full share of both false claims and extra petitions, exclusive of the above, which promise soon to increase beyond all calculation, for the rage for summary investigations has now begun to spread

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spread itself over the zillah, so as to interrupt the execution of the decrees of the district moonsiffs, and all the summary investigations, demanded in consequence, must, according to the precept, be made by the zillah judge.

The term summary, however, is most inaptly applied to these investigations. There are generally four or five motions (as they are called) and cross motions, besides several exhibits, to be considered, and six, eight, and ten witnesses on each side to be examined; so that the investigation is always more fatiguing and unsatisfactory, and frequently more tedious than the trial of a regular suit.

The evil is not confined to the zillah court, nor does the trouble of the zillah judge cease when he has passed his summary decision. The last party having no institution fee to pay, and not being required to give security, is sure to appeal by extra petition to the provincial court, who call upon the zillah judge for his proceedings in the case, whilst he is left in doubt how to act in regard to carrying into effect or otherwise his own decision. If that decision should be confirmed he will hear no more of it, except casually; and if it should be reversed, and a transfer of property be ordered in consequence, it may happen that execution will be impracticable, by reason of the property having been previously sold to a third person under the summary decree of the zillah judge.

It will be said, perhaps, that the mischief ought not to extend so far, seeing that the provincial court, in their precept of the 20th February 1816, contemplate the dissatisfied party seeking redress by regular suit. To this I can only reply, that hitherto the practice of that court has been to receive the summary appeal by extra petition, and to send for the zillah judge's proceedings; and really I do not see how the party could otherwise obtain redress, for if he instituted his regular suit in the zillah court, the chance is that the zillah judge would come to the same decision on the regular suit that he had previously passed on the summary one, for in general he would have precisely the same evidence before him on both occasions.

For a complete illustration of the inconvenience arising from the want of some general rule for the guidance of both provincial and zillah courts, in regard to the disposal of irregular claims to attached property, I would beg leave to refer the Sudder Adawlut to the case of Jana Ramkistnamah, which will found, I believe, in their proceedings of the 11th January 1814.

Having now pointed out the nature and extent of the evil, it may, perhaps, be expected that I should suggest some remedy. I would recommend that the provincial court's precept, of the 20th February 1816, should be annulled, and that the Sudder Adawlut should authorize and direct that in all cases where a third person may put in a claim to property which has been attached in execution of a decree, the judge, register, or district moonsiff, as the case may be, should call upon the party at whose instance the property has been attached, to state shortly and simply whether he admits or denies the claim, warning him at the same time of the consequences that must follow if the claim put in should prove just. If the party seeking execution of decree should admit or decline contesting the claim, there would, of course, be nothing to do but withdraw the attachment; on the other hand, if the party seeking execution of decree should assert (as I will venture to predict he will do, and that too justly, in 19 cases out of 20,) that the claim is false, and merely put in to prevent execution of the decree, let the claimant be informed that if his claim is just he must prefer a complaint against the person at whose instance the property has been attached, in the manner prescribed by section 3, Regulation III. 1802, and other regulations for the institution of regular suits; and that if he should not so prefer his claim within, say 15 days, the property will be sold for the purpose for which it was attached. In the event of the claimant instituting a regular suit and establishing his claim, the resisting person would justly be charged with the costs. The knowledge of this circumstance would prevent the person seeking execution of decree from resisting a claim which he knew to be just; and I take it for granted, that it scarcely ever happens but one native possesses the certain means of knowing whether the claims of another (I mean claims of the nature in question) are just or otherwise.

I venture to recommend this plan with the more confidence, from the success of one framed on the same principle, which I have adopted as a temporary expedient for averting as many summary investigations as possible. Almost every court day one claim is put in to attached property. I immediately call upon the party at whose instance the property was attached, to signify whether or not he denies

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the justice of the claim and demands a summary investigation, warning him that he must bear the costs of the summary investigation (for they are attended with some comparatively small costs), if the claim should prove just. I have found a good many of these persons decline to contest, even summarily, claims which I therefore conclude they must, upon personal inquiry, have discovered to be just; on the other hand, however, I have found by far the greater number of these persons assert the claims to be false and demand a summary investigation, which is, of course, ordered; and the result of all those that have hitherto been made (there is an immense arrear of them) has invariably been that the claim proved utterly false, and the work of a conspiracy to prevent the execution of a decree. If the costs, and other consequences of a groundless regular suit, stared the claimant in the face, I think it is rather more than probable that he would suffer the 15 days to elapse without filing his suit.

(signed) *J. O. Tod*, Judge.

(A true copy.)
(signed) *Geo. F. Cherry*, Judge.

(No. 1.)

From *J. Haig*, Esq. Acting Register in Charge, Court House, Combaconum, to the Register to the Sudder Adawlut Court, Fort St. George.

Court House, Combaconum, 8 January 1824.

Sir,

No general rule having yet been laid down regarding the mode of disposing of claims to property attached in execution of decrees, I have therefore the honour to request I may be favoured with instruction on this subject.

2. Very frequent applications are made to me to investigate claims to property attached in execution of moonsiff's decrees, and I am convinced, by the explanations given by the moonsiffs in answer to references on this subject, that they do not know how to proceed in such cases.

The mode of proceeding which appears to me to be most consonant to the spirit of the Regulations, and best calculated to prevent injustice and litigation, is as follows, viz.: That upon a claim being made to property attached in execution of a decree, an ishtiharnamah should be fixed up in the court-house, requiring all claimants to it to appear before the court, and substantiate their claims by witnesses and documents within a certain period, (to be fixed according to circumstances, and during which the property should continue under attachment,) and notifying that in the event of their failing to do so, or to give sufficient security for prosecuting their claims by regular suits, the property will be sold in satisfaction of the decree; and I have therefore issued instructions to the moonsiffs in this zillah to observe the above rule in executing their decrees until further orders.

(signed) *J. Haig*,
Acting Register in Charge.

From *A. D. Campbell*, Esq. Third Judge for the Register of the Central Provincial Court, Chittoor, to the Register to the Court of Sudder Adawlut, Fort St. George.

Chittoor Central Provincial Court,
Register's Office, 8 Oct. 1828.

Sir,

I am directed to transmit to you an extract from the proceedings of the court under this date, and to request you will lay the same before the judges of the Court of Sudder Adawlut.

(signed) *A. D. Campbell*,
Third Judge for Register.

Extract from the Proceedings of the Provincial Court of Appeal for the Centre Division, under date 8th October 1828.

In miscellaneous case, No. 68 of 1828, read return of the 7th instant, from the zillah judge of Chittoor to this court's precept of the 26th September last.

2. In this case the petitioner had obtained a decree in his favour on attaching the defendant's property; a claim of mortgage to it was set up, and the zillah judge referred

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referred the successful suitor to a second regular suit against the alleged mortgagee. This was the very reverse of the plan suggested in the communication of the Sudder Adawlut of the 29th July 1817, upon which the zillah judge states that he acted; for it is there proposed that the alleged mortgagee should institute the suit against the successful suitor, not the latter against him; and the contrary proceeding of the zillah judge, therefore, had, in the opinion of the provincial court, a tendency to encourage the false claims which he deprecates so strongly.

3. The provincial court direct, until further orders, that the zillah judge in all cases do adhere strictly to their instructions of the 26th September last.

4. Ordered that extract from these proceedings be sent to the zillah judge of Chittoor, with precept, requiring conformity thereto; return to be made without delay.

5. The return of the zillah judge has led the provincial court to consider attentively the orders of the Sudder Adawlut of the 29th July 1817, the proceedings of this court of the 18th August 1817, and the report of this court to the Sudder Adawlut of the 6th October 1815, therein alluded to, upon which no final instructions appear to have been received. The subject of that correspondence is of general concern, and as the higher court have recorded their opinion "that a general rule of practice should be established and observed by all courts under this presidency," it is resolved to submit to them translation of the petition received in this case, with extract from this court's proceedings of the 26th September last, copy of the zillah judge's return, and extract from these proceedings, and to solicit early orders on the general subject, for the guidance of this and the lower courts.

Para. 49, 50.

6. Until some such enactments as this court formerly proposed are made, the provincial court think that their orders of 26th September last contain practical rules better calculated to promote justice, and prevent unnecessary litigation, than the plan suggested by the Judge of Masulipatum in 1817. It is not more the interest and duty of individual suitors than of the courts themselves, to check fraud and chicanery when opposed to the execution of their decrees; for by such practices the cause of justice itself suffers more than that of individuals. To seize and sell disputed property without a full investigation might lead to injustice, and after a court has taken ample evidence, and decided the matter at issue, to bring before it the same matter, by regular suit, involves fruitless litigation. It is for these reasons that the provincial court incline to treat such cases as investigations to which the courts are bound in execution of their own decrees, leaving the higher to correct errors of the lower tribunals, and exempting all parties as much as possible from the expense and delay of further unnecessary litigation.

7. Ordered, that extract from these proceedings be transmitted with the papers before mentioned to the Court of Sudder Adawlut.

(A true extract.)

(signed) *A. D. Campbell,*
Third Judge for Register.

To the Senior Judge and Judges of the Provincial Court of Appeal for the Centre Division Chittoor.

The humble representation of Aroonagherry Chitty, of Palaya Acramoor, of the Talook of Vellore, in the Zillah of Chittoor.

26 September 1828.

1. That I instituted a suit in No. 151 of the zillah court, for the year 1826, against Bawah Cawder Saib for the recovery of 300 rupees, with interest, due to me on bond, and obtained a judgment in my favour in the register's court for *Rs.* 423. 8 *a.* upon which an order, or herkumnamah, was issued against the said defendants Bawah Cawder Saib, for the execution of the said decree, and the defendant, with a view to deprive me of my lawful money, concealed all his personal property by putting it into the possession of Kherdanud Ismal Saib, who married the sister of his wife. The defendant's house, situated in the said village, was therefore sequestrated, and advertised for sale in satisfaction of the above decree.

2. The defendant, in order to deceive me, fabricated a mortgaged bond in favour of the said Ismal Saib, as if his house was mortgaged to the said person, caused it to be drawn out by his gomastah, Takeer Saib, and got it witnessed by

Eberam

Eberam Saib, who married another sister of his wife, and his brother-in-law, Meeru Saib, and caused a petition to be presented to the Chittoor zillah court by Goolamully, the son of the said Ismal Saib, who is since dead, stating that the said house could not be sold, it being mortgaged to his father.

3. The zillah judge thereupon issued orders to suspend the sale of the said house, and proceeded to investigate the matter, when the said Goolamally Saib delivered into the court the said forged mortgage bond, and proved it by the said false witnesses, who attested it. Although no credit could be given to the evidence of the said witnesses according to law, yet these witnesses have deposed that the mortgage bond was drawn out after the advertisement being published.

4. I further beg to state, for the information of the court, that if the house of a person be mortgaged or sold to another in this country, it is customary for the neighbours to attest the mortgage bond, or bill of sale, and put such house into the possession of the person who lends money. But as the said bond is a forged one, and not executed in due form, it cannot be legally admitted as genuine. The defendant and others endeavoured to get an old stamped paper for the purpose of fabricating the said mortgage bond; but not getting it in this zillah, they got one in the Salem zillah, and some days ago fabricated the said bond, dating it with a date anterior to the commencement of this suit.

5. This illegal act of fabrication is well known by the people in the said village. I presented a petition in January 1828 to the zillah judge, with a list of witnesses to prove the same. Should the said witnesses be summoned and examined, it would have been fully proved that the said mortgage is not a true one, but it was fabricated some days ago. The zillah judge instead of doing so, and cancelling the said irregular mortgage, and issuing orders to cause the money to be paid to me, passed an order on the 15th August last that I should institute a regular suit against the mortgagee within one month for the said house; the copy of his order accompanies this.

6. If any merchant borrow money on mortgage, such amount could not be omitted from being entered in the account. The account of the defendant is now under attachment. If it be inspected it will not appear that the said mortgage bond was executed, or that the money was credited in the said account on the same date.

7. I therefore most humbly request that your honourable court will be pleased to take the foregoing reasons into consideration, and to issue a precept to the zillah judge directing him to send for the witnesses I named, and the accounts of the defendant; and on my proving the falsity of the said mortgage, to sell the property of the defendant in satisfaction of the decree in my favour. If I sue the mortgagee according to the unjust order of the zillah judge, I will be subjected to great loss and inconvenience.

(signed) *Aroonagherry Chitty.*

(A true translation.)

(signed) *A. D. Campbell,*
Third Judge for Register.

Extract from the Proceedings of the Provincial Court of Appeal for the Centre Division, under date the 26th September 1828.

In miscellaneous case, No. 68 of 1828, read petition of Arunagerry Chitty, of Pala Aumoor, in the district of Vellore.

2. It has been very much the practice, after a decree has been passed against the defendant, for him to delay its execution, by falsely alleging that the property has been mortgaged.

3. At the period for executing a decree in a petition being presented, declaring the property to be mortgaged, the proper mode of proceeding is evidently this: The case should be regarded throughout as a summary one; the court should ascertain by the examination of witnesses, upon oath, whether the petition be true or not, and according to the result of the inquiry either relinquish the property or take

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take it in satisfaction of the decree. If either the plaintiff or the alleged mortgagee consider himself aggrieved by the decision, he should prefer an appeal to the higher court.

4. But on such occasions zillah judges have sometimes declined adopting this summary and natural mode of inquiry, and directed the plaintiff to prefer a suit against the alleged mortgagee, a proceeding which the provincial court think calculated, in an infinite degree, to increase the number of suits, and the difficulty of deciding on them.

5. In the present case the zillah judge has taken evidence from Gulaum Hussain, but none from the petitioner, and seems to have decided that the mortgage is valid; yet he has directed the petitioner to sue Gulaum Hussain, for what the order does not state. If the mortgage was proved to be valid, there could be no use in any suit; if it was not proved to be valid, the property should have been taken in satisfaction of the decree.

6. The zillah judge is directed to take the evidence offered by the petitioner, to decide the case anew, to relinquish the property, or take it in satisfaction of the decree, according to the result of the investigation, and to leave either party, dissatisfied with his decision, to prefer a summary appeal to this court.

7. Ordered, that extract of these proceedings, with a copy of the petition, be transmitted to the zillah judge of Chittoor, with precept requiring conformity thereto, returnable within two weeks from and after its receipt.

8. Ordered, that the same be communicated to the petitioner.

(A true extract.)
(signed) *A. D. Campbell,*
Third Judge for Register.

To the Register to the Provincial Court of Appeal, Centre Division, Chittoor.

1. The zillah judge has the honour to acknowledge the receipt of the extract which, under the same date, accompanied the annexed precept, and which, founded upon a petition addressed to the provincial court of appeal, by Arunagerry Chitty, of Pala Aumoor, communicates the views of the judges in reference to the mode of proceeding with miscellaneous claims, preferred by persons to property attached in satisfaction of decrees of court, and directs the zillah judge, instead of ordering such claimants to institute a regular suit against the person at whose option such property may have been attached, to take the evidence offered, and to relinquish or retain the said property according to the result, leaving the party to prefer a summary appeal to the provincial court.

2. In return to the extract above mentioned, the zillah judge begs to state, that he has usually followed in practice the directions it conveys, it being undoubtedly, as therein denominated, the more natural mode of inquiry. His reason, in the present instance, for deviating therefrom, originated in the great increase of late of such petitions, for the most part exceedingly vexatious and litigious, and which, as they are usually the work of conspiracy, and tend directly to prevent the decrees of court from being executed, are obviously to be checked by some penal sanction.

3. In pursuit of such penal sanction, fine and imprisonment (in lieu of payment) might, in strict conformity with the spirit of the Regulations, be adopted, and the inquiry be conducted on the principles already adverted to. Considering, however, that such claims are entirely original, that numbers would not be deterred by a fine, who would be impatient of the trouble and inconvenience attendant upon the institution of a regular suit; also, that the latter mode of inquiry is generally fuller and more satisfactory; and lastly, that nine at least of such petitions in ten are utterly groundless, though often embracing infinite trouble, the judge gave the preference to, and acted upon the plan set forth in a circular communication from the Court of Sudder Adawlut, under date the 29th July 1817.

4. The judge, in assuring the upper court that the evil attending the practice in question is most extensive and very serious, respectfully submits (in expressing his faithful adherence to their present instructions, until specially permitted to deviate therefrom,

therefrom, when necessary, for the Sudder Adawlut do not appear to have passed any definitive orders) whether it may not be expedient to permit the zillah courts to follow occasionally the plan which the aforesaid circular points out, as having been submitted by the judge of Masulipatam on the 24th May 1817.

Given under my hand and the seal of the Court, this 7th day of October, A.D. 1828.

(signed) *G. J. Walters*, Judge.

(A true copy.)
(signed) *A. D. Campbell*,
Third Judge for Register.

From *A. D. Campbell*, Esq. Third Judge for Register of Central Provincial Court, Chittoor, to the Register to the Court of Sudder Adawlut, Fort St. George.

Chittoor Central Provincial Court,
Register's Office, 10 October 1828.

Sir,

I AM directed to transmit to you an extract from the proceedings of the Court under this date, and to request you will lay the same before the judges of the Court of Sudder Adawlut.

(signed) *A. D. Campbell*,
Third Judge for Register.

EXTRACT from the Proceedings of the Provincial Court of Appeal for the Centre Division, under date 10 October 1828.

1. IN miscellaneous case, No. 89 of 1827, read again the return made by the zillah judge of Chittoor on the 22d October 1827, to this court's precept of 12th of that month.

2. In this case it was alleged by the petitioners that the Enam village of Padminhakum is divided into three grand shares, one of which is subdivided into five minor ones, of a nature quite separate and distinct, held by the four petitioners to this court, and the defendant in the appeal case, No. 1 of 1825, on the zillah file; so that the defendant is represented to hold in Enam one fifteenth only of the entire village. In lieu of attaching only his property, the petitioners represent that the zillah court have attached their share also, or one third of the whole village.

3. Instead of sending to this court all the evidence which, by the extract from his proceedings of the 11th September 1827, already filed here, it appears the zillah judge took in this case, he has forwarded only two complaints, and the evidence of one of the said five persons, the nephew of the defendant. The provincial court see nothing inconsistent or contradictory therein. The petitions to the zillah court correspond with that to this court, with this addition, that the defendant in question, besides his separate and distinct 15th share in the alienated melworum of the village, is also stated to possess a certain tenure equally distinct in the crodyworum as a common cultivator. In both cases his right and those of the petitioners are alleged to be perfectly distinct. The nephew of the defendant merely states that certain cattle, a house, and paddy attached, belong to himself.

4. In such cases the revenue officers being more conversant with the local tenures than those of the judicial department, all difficulty might have been avoided, had the zillah court applied to the collector to state what the rights of the defendant alone were in the village in question. The provincial court conclude that the evidence taken by the zillah judge has convinced him that the petitioners have no right whatever to the tenures they claim in the village; for if they have, it would be the height of injustice to sell their rights, when the decree is against the defendant alone; and to tell them to sue the successful suitor for them, before the very tribunal which has pronounced against them, would add despair to injustice, and lead to unnecessary litigation, which the courts cannot too much

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much discourage. If the petitioners, on the other hand, have any right to the tenures claimed by them, they ought not to be infringed, but upheld by the courts, and should be carefully separated from the tenures of the defendant, before the latter are put to sale.

5. With these observations, and with reference to this court's orders of the 26th September last, it is resolved to call for all the evidence taken in this case by the zillah judge, who will accompany the same by an abstract thereof, explanatory of the view taken of it by him, which led to the decision he has passed.

6. The zillah judge in his return states that he acted on the orders of the Suddur Adawlut, referring, as the provincial court presume, to those of the 29th July 1817. But the case bears so strongly against the proceeding then suggested by the judge of Masulipatam, and in favour of the arrangement proposed in preference to it by this court, that they resolve, with reference to their proceedings of the 8th instant, to forward to the higher court copy of the judge's return, with extract from these proceedings, as bearing directly upon the question then referred for their orders.

(A true extract.)
(signed) *A. D. Campbell,*
Third Judge for Register.

To the Register to the Provincial Court of Appeal, Centre Division, Chittoor.

1. In return to the annexed precept, the zillah judge has the honour to forward two petitions presented by the individuals in question, as also a long examination of one of them, named Puran Saib. The various inconsistencies and contradictions therein obtaining and committed, led the judge to conclude the petition of Puran Saib to be without foundation, on which account the property was directed to be sold in satisfaction of the decree passed in favour of Anantareddy; the remaining petitioners under certain instructions from the Court of Sudder Adawlut (the date of which the judge does not remember and cannot refer to, the said instructions appearing to have been communicated only to the western courts, in the year 1819 or 1820,) were directed to sue the said plaintiff Anantareddy, if their claim were well founded.

2. The zillah judge has suspended the sale, and will obey such ultimate instructions as he may receive.

Given under my hand and the seal of the Court, this 22d day of October, A. D. 1827.

(signed) *G. J. Walters*, Judge

(A true copy.)
(signed) *A. D. Campbell,*
Third Judge for Register.

From *W. E. Underwood,* Esq. Register to the Centre Provincial Court, Chittoor, to the Register to the Court of Sudder Adawlut, Fort St. George.

Chittoor Centre Provincial Court,
Register's Office, 10 December 1828.

Sir,

I am directed to transmit to you the accompanying extract from the court's proceedings under this date, and to request you will lay the same before the judges of the Court of Sudder Adawlut.

(signed) *W. E. Underwood,* Register.

Extract from the Proceedings of the Provincial Court of Appeal for the Centre Division, under date 10 December 1828.

In miscellaneous case, No. 89 of 1827, read further return, dated the 29th of last December, of the zillah judge of Chittoor, to the precept of the court of the 10th of the same month.

2. The

2. The court have attentively perused the evidence taken by the zillah judge to ascertain to whom the attached property belongs, and are of opinion that it is unsatisfactory and insufficient. They therefore direct that he take such further evidence as may be procurable, and decide upon the case as a miscellaneous one. The witnesses examined, as they belong to the village, and as one of them is the curnum, have evinced in their depositions either deliberate concealment of the truth or unaccountable ignorance. The court are therefore of opinion that the collector should be called upon for a certificate, declaring whether the petitioners be partners in the village, and if they be, what shares they hold respectively.

3. This is one of those numerous cases which overwhelm the courts with a species of business that ought scarcely ever to enter them, and which seem to call loudly for the notice and correction of the Legislature. It is briefly and plainly this.

4. A plaintiff gains his suit, an order is issued for the execution of the decree against the defendant. When the property is about to be taken, a third party comes forward and declares that it is mortgaged to him, or that he is a partner in it.

5. Almost the whole of these representations are false, and have been preferred with a view to prevent the execution of the decrees.

6. The evil appears to have been general, to have taken its rise at the first opening of the courts in the year 1802, to have been gradually increasing, and to have attained a height no longer to be borne in the administration of justice. It was fully described, and a remedy for it was proposed in paragraph 49 and 50 of a report of this court, under date the 6th of October 1815, and alterations suggested by the Honourable Court of Directors for the judicial system. The remedy was that all curnums should keep registers of mortgages and divisions of estates, and that their certificates should be indispensable for the admission of claims to property attached in satisfaction of decrees. The rules proposed for this purpose were drawn out in the shape of sections, as well for the perfect illustration of them as for their easy introduction, if approved of, into a Regulation. Forms for the registers and certificates were annexed, and so constructed as to render the duty light to the curnums, and the work readily intelligible to the public. The court are of opinion that this plan is highly expedient, and would be perfectly effectual against the evil. The certificate of the curnum would be immediate evidence, preclude the evidence of examining witnesses, and prevent all appeals.

7. In every such case, the court are decidedly of opinion that the claim of the third party belongs to the class of documents termed miscellaneous, and should be proceeded in summarily, by taking and deciding on the evidence produced by him. But the zillah judge thinks that the claim should be preferred in a regular suit, and that the third party should be instructed to institute it against the plaintiff.

8. The plaintiff, if he thinks that the property belonged unencumbered to the defendant, or if he knew nothing about it, is manifestly in no default for possessing it, and cannot therefore be justly sued for it. It was awarded to him by the court, and if it was owned by several, or encumbered at the time of the institution of the action, the court alone is in default, and it is against the court alone, consequently, that the complaint of the third party lies. So true and natural is this, that in the first instance redress is always asked, not from the plaintiff, but from the court, and if denied, the complaint to the next higher tribunal is made, not against the plaintiff, but against the court. As the plaintiff is in no default, so neither is the third party, if his claim be good in any. For instance, if a field belonging to him happen to be included in a seizure of the defendant's property, the matter may be immediately set to rights by an inquiry, and it would be evidently absurd to put him to the delay, trouble, and expense of a regular suit. For him to be compelled to sue for his property or lose it; and for the plaintiff to be made liable to be sued for it when the truth of the claim upon it is unknown to him, and when it has been awarded to him by the court, would be to both, there can be no doubt, an injustice equally irregular and intolerable.

9. As such claims are almost all false, and as the plaintiff may be unable to form a judgment of the few that are true, it can scarcely ever happen that he knows of the third party's having justice on his side; but even if such an event occur, and he point the property out and urge and assist the seizure, it cannot affect the principle above described; he is guilty of a deceit for which he should be fined, and the default is still in the court. The third party, when his claim is false, as it almost always is, should, if a detection be complete, be visited by a most severe penalty. The zillah judge has adopted a new mode of punishment, namely,

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the necessity of instituting a suit, and he thinks it more severe than a fine, without reflecting that it falls on those third parties, though few, whose claims are true, and on those numerous plaintiffs who know them to be false, or are in total ignorance of the matter. The evil is indeed great, and to oppose it some authority should establish a punishment, but the authority should be the Legislature, not a zillah judge, and the punishment should fall on the guilty, and not the innocent.

10. The zillah judge's mode of process at once strikes the mind as contrary to all reason. By it, after one suit is brought to a termination, the execution of the decree requires the commencement of another, and a plaintiff sues a plaintiff.

11. It would be more natural for the third party, as he is a plaintiff, to sue the defendant, but not more reasonable, as the defendant asserts the claim to be true, and declares himself ready to satisfy it, if the judge will let him.

12. If the defendant deny the truth of the claim, the case is entirely altered, and assumes the usual form; and the third party may institute a suit, but it must be against the defendant. There will then be two plaintiffs, and if their claims be true, the judges will have to consider which of them has the greatest right to the property; but the plaint of the third person should be well inquired into before the filing of other pleadings, so that if false, it be rejected.

13. If the principle thus illustrated and advanced by the court be sound, all proceedings held in conformity with it must be the best. The zillah judge expresses himself as being positive that it leads the courts into a line of process of extreme length and difficulty, but it may safely be relied on, that the road pointed out by reason and justice is the shortest and the easiest.

14. The court have read with surprise the many passages in the zillah judge's return, in which he strives to show that proceedings by suit are briefer than those which are summary.

15. He also maintains that the necessity of instituting a suit will be so terrific as to expel and keep off almost all false claimants. He does not seem to think that it might have the same effect on the true. But the court do not assent to his assertion, and on the contrary, are well assured, such is the litigiousness of the people, that his mode of process would fill the courts with regular suits instead of summary petitions.

16. He refers to proceedings of Messrs. Newnham and Dacre on the 1st December 1826, in which they, as judges of this court, sanctioned his having directed the third party in a case to institute a regular suit against the plaintiff, and in which they fined the plaintiff for objecting, in a complaint to them. to that mode of process which they dignified with the name of "the regular course of law." He compares this with the proceedings of the judges on this bench on the 26th of last September, of a nature directly the reverse, and expresses a doubt in these words, "how far the Regulations contemplate in a general sense the judges of the courts of appeal and circuit virtually cancelling the orders of their predecessors." This court are of opinion that they are bound on all occasions to decide according to their judgment, however contrary to that previously recorded by other judges, or even by themselves; but they cannot account for the zillah judges thus receiving their orders of the 26th of September as an innovation. From the period of the introduction of the judicial system in the year 1802 to 1822, such cases are always treated as summary, and so far as this court can discover, they are led to believe that natural mode of process condemned by the zillah judge, subsisted in the centre division until it was overturned by Mr. Newnham, Mr. Dacre, and himself.

17. The zillah judge proposes that it may be left to his discretion, as circumstances may direct him, to follow either the one or the other mode of process. To this liberty of choice the court object, as one must be right and the other wrong.

18. The proceedings of the Sudder Adawlut of the 29th of July 1817, referred to in the return, encloses an extract from a letter of the zillah judge of Masulipatam regarding the prevalence of these false claims; he anounces his having invented and of his own accord adopted the very mode of process for which the zillah judge of Chittore is an advocate. The Sudder Adawlut made no remark on the subject, but only called upon the four provincial courts to suggest such measures as might appear most likely to check the evil complained of. The judges then on the bench in this court, in reply, dated the 18th of August 1817, stated for the correction

correction of the evil they could devise no better rules than those proposed in their report of the 6th of October 1815, of which they enclosed an extract. It does not appear that any plan has been determined upon in consequence. The new invented process of the zillah judge of Masulipatam has never received a word of approval from the Sudder Adawlut, but their having circulated it has been taken by the zillah judge of Chittore as a ratification of it. In disregard of established practice he imitated the zillah judge of Masulipatam by adopting it, and Mr. Newnham and Mr. Dacre bestowed upon it that sanction which the Sudder Board have withheld.

19. Ordered, that extract of these proceedings be transmitted to the zillah judge of Chittore by precept, and at his request to the Sudder Adawlut, with copy of his return.

(A true extract.)
(signed) *W. E. Underwood*, Register.

To the Register to the Provincial Court of Appeal, Centre Division, Chittoor.

1. THE zillah judge has the honour further to acknowledge the receipt of the extract from the proceedings of the Provincial Court of Appeal, which accompanied their precept of the 10th October, (returned on the 23d instant,) and which, with reference to a return made by the zillah court, on the 22d of October 1827, to the Provincial Court's precept and extract of proceedings of the 12th of the aforesaid month and year, calls for certain information in addition to that then transmitted, which is now forwarded.

2. The case in which these proceedings have their origin, is one of appeal from the Regulation No. I. of 1825, appellant Anantareddy *v.* Mahomed Sabwetolla; the latter was cast for 1,094 *r.* 11 *a.*, and the usual writ at the suit of the appellant issued through the moonsiff of Cholungeepooram for the collection of costs. The moonsiff refused the petitioner, Perain Saib, the nephew of respondent, on his claiming some grain and cattle then attached by the court. This individual did not, it appears, nor yet Aben Mahomed, who also petitioned the moonsiff, allege any grievance to the upper court.

3. The petitioner, Aben Mahomed, was also referred with others to the zillah court by the moonsiff, who on the 19th of March ordered in their petition that the respondent held a pottah granted to him by the Circar for the very land which had produced the attached grain, a fact acknowledged by the petition itself. Parin Sahib also admits this in answer to a question put by the moonsiff, as also the other petitioners, who, however, say they all pay the Circar. The judge sent for the appellant, who attending declared by petition, that the respondent, to evade execution of the decree, has instigated the other petitioners. He called two witnesses, and Parin Sahib, in the 2d and 3d paragraphs of his list of witnesses, requests that the evidence of five witnesses may be taken, and orders passed upon his claim, and the claims of the other five petitioners, who (exclusive of the above apparent union of interest) call no witnesses.

4. The zillah judge is led by the extract to believe that the Provincial Court are of opinion, that part of the village tenure has been held in attachment, and ordered to be sold; should such be the case, he begs respectfully to state generally to such part of the extract, that the dissenting petitions have created erroneous impressions; no land whatever has at any period of the proceedings been attached, nor has irrigation from the wells been suspended; a house, some grain and cattle only was attached; the grain (of which the petitioners to the Provincial Court claim a part) was directed to be sold, and the proceeds deposited in the court, it being a perishable article. The appellant also, on the 8th September 1828, presented a petition praying its sale on the ground that it was spoiling; no sale, however, excepting of 50 rupees' worth of property belonging to respondent has taken place. To the cattle and to the house (which also have not been sold) no claims have been preferred, but by Peran Sahib, the respondent's nephew, who did not appeal from the zillah judge's order.

5. The record called for is now, with abstract of evidence, submitted. Several witnesses have stated in a general manner that part of the attached grain belongs to the petitioners to the Provincial Court; their statements notwithstanding did not,—under the circumstance of the potah for the land on which it grew being admitted by the petitioners themselves to be granted in the name of the respondent,—appear satisfactory or conclusive, particularly as they do not acknowledge

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ledge themselves to be under-renters. This judge also entertains strong suspicions that the 99 pagodas alluded to in the 6th paragraph of the appeal decree, as lent to certain cultivators by the respondent, may have actually been received by these petitioners; he felt therefore unable (and the difficulty still exists) to come to any decided conclusion regarding the proprietary right to the grain, and considered it more consistent with justice to direct the institution of regular pleadings, than to hazard the giving prematurely an order on proceedings imperfect in themselves. The deciding in the first instance as a miscellaneous question of right to grain, involving probably the right of tenure of not less than five, if not six individuals, whose claims were not regularly before the court, would certainly have been to proceed contrary to established rule, and would, it may be feared, as a precedent, give rise to a far greater degree of litigation than the proceeding by regular suit, which, in all probability, would not, where litigious, be at all instituted.

6. The inconsistencies which the judge in his former return alluded to, as evidence upon the statement of Peran Sahib, the nephew of respondent (and on which account the same was then forwarded,) are his laying claim, though apparently only 20 or 25 years of age, to cattle as his own when his father is living, and going backwards and forwards to Madras, and the lame account he gives of the means by which the cattle came into his possession; also his claiming a house in which the respondent (whom he admits to be the head of the family) has always resided. The character of this statement must, it is respectfully considered, be deemed suspicious, and a union of interest among the petitioners may be inferred from the concluding expression of Peran Sahib's list of evidence, and other circumstances.

7. From the above it will be evident that no land has been attached, also that no sale of the grain attached to the extent of 89 culatoos (of which the petitioners claim a portion) has taken place; and further, that the petitioners,—although an order was given for the sale, not merely because the article was of a perishable nature (the proceeds were to be deposited in court), but because the judge did not and still does not deem the miscellaneous proceedings to have satisfactorily established their claim to the said grain,—had the option either by petition, the mode resorted to, or by the institution of a regular suit, to effectually stop the abduction of the proceeds. Had no such petition been presented, or suit been preferred, it would have followed that they had desisted from a litigious claim; the contrary proceedings would (and no doubt will) lead to the recognition of their claim if just; hence nothing opposite to the established usage of the court has taken effect. It may be necessary to add, that the judge evidently could not have intended to prejudge their claim, or to pronounce thereon definitely, though he admits that his endorsement on one of the petitions, owing to the hurry of business, is not properly worded, or he would not have ordered the deposit of the proceeds, or the institution of a regular suit. He satisfied himself, under the circumstances enumerated in the third paragraph of this return, not only that they had not afforded proof miscellaneously, but that strong suspicion of dishonesty attached itself to the claim set up against the decree.

8. Upon receiving the Provincial Court's commands, he will follow the suggestions embraced by the former part of the fourth paragraph of their return, and taking in addition thereto such further evidence as may be procurable, decide upon the point in a miscellaneous manner. He has carefully considered the fifth paragraph of their extract, and believes the judges to desire the transmission of the present record or evidence taken previously to his holding further proceedings in the case.

9. The above view of the case may probably in some particulars not altogether coincide with the opinions of the Provincial Court; it is, however, hoped that its general features will not appear to them to militate against the spirit of those remarks which were circulated by the Sudder Adawlut on the 29th of July 1817; and the judge observing it to be the intention of the Provincial Court, in reference to their proceedings of the 8th instant, to forward to the judges of the Sudder Adawlut the return of the zillah judge, dated the 22d October 1827, in order to their sanctioning for general practice the orders of the Provincial Court of the 26th September last, which directs to the effect that the judge is to regard altogether as miscellaneous the claims of third persons (not being plaintiff or defendant) to property attached in execution of decrees, and not to direct such persons to file regular suits against the individuals at whose instance attachment

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may have issued, and being still assured, though with all deference for reasons appended, that such proposed alteration will (unless a discretionary power be vested in the judge to depart therefrom, as remarked in his return of the 7th instant to their precept of the 26th September) be productive in practice of the utmost inconvenience, and inevitably increase the already heavy miscellaneous duties of the office, which it is of primary importance to lessen, to an extent which must incapacitate the judge from giving his attendance to its regular duties, and greatly interfere with that general superintendence in the effectual discharge of which the character and respectability of the establishment mainly depends, respectfully requests, in reference to reasoning about to be stated, and also under the provisions of Regulation XXII. A.D. 1802, that the present return with this return of the 7th instant, which he considers material, may likewise be submitted for the opinion and orders of the Court of Sudder Adawlut, together with the documents previously referred.

10. Previously to entering upon the question at issue, the judge begs again to state that he will, until the commands of the Sudder Adawlut be received, strictly adhere to the orders of the Provincial Court, of the 26th September last: it may likewise be proper, the latter authority having expressed their determination to submit the question in point to the upper court, to add that he cannot consistently request a reference of the same in the usual acceptation of the term, and does not desire to be so understood. He, notwithstanding, though with all deference, and with every respect, considers himself justified in requesting the transmission of this return, as also that of the 7th instant, under the regulation above quoted, (not solely on the grounds of public expediency, in reference to the measure which it is proposed to introduce,) but because he entertained doubt how far the regulations contemplate in a general sense the judges of the courts of appeal and circuit virtually cancelling the orders of their predecessors by the circulation of others entirely opposite in their nature.

11. The orders and sentiments of the Provincial Court of Appeal, embodied in their precept and extract of the 1st December 1826, are here respectfully alluded to, as differing altogether from those of the 26th September last. A third person at that period came forward, and demanded in the zillah court certain lands which had been attached at the instance of the plaintiff; who had gained a decree against a defendant. The said person asserted his father to have given the said land in mortgage to the plaintiff's brother. The zillah judge ordered him to institute a regular suit against the plaintiff; from this order he petitioned the Provincial Court, who under the date aforestated, not only fined him as litigious and disrespectful, but made use of these words: "The petitioner has contumaciously also refused to conform to the directions of the zillah judge to depend on a regular course of law for establishing his claims. The Court repeat that this is the only regular method, and if injured, due damages will be granted." It was the recognition of a discretionary authority to follow this opinion, which the zillah judge solicited in the fourth paragraph of his return of the 7th instant, because the great increase of such groundless claims sometimes requires to be checked, and because cases may arise, and have, as will be shown, originated where such discretion appears extremely judicious and proper. The Court's order of the 26th of September last, enforced by their proceedings of the 8th instant, direct a strict adherence to proceedings of a miscellaneous nature, in cases of claim by third persons to property attached in execution of decrees, on the ground that such mode of proceeding is the proper mode.

12. It may also be respectfully presumed that the Sudder Adawlut favoured the sentiments and recommendation of the judge of Masulipatam. If this be not established from the fact of their circulating the same, it undoubtedly may from their subsequent silence, or their tacitly permitting the zillah judges to follow it or not, as appeared expedient to them.

13. It was ruled by high authority on a late occasion, that independently of redressing well-founded complaints, made by prisoners to the circuit judges on their visiting the gaols, the security of the convicts, &c., that such officers are not supposed to give any directions regarding the internal existing economy of the establishment, which for a variety of reasons the criminal judge was pronounced better able to guide. There is, it is submissively submitted, if not a direct, at least an indirect analogy in the judge's judicial duties. He must be better acquainted with the internal state of his office, with the daily increase and decrease of business, with the causes thereof, with the pressure upon his time, and

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with the most expedient and fit remedies to occurring exigencies, in points not material, than can others. The Sudder Adawlut, upon these principles, probably left them to act in a discretionary manner in the instances above quoted, and the Regulations, in all cases not provided for, leave the courts to follow such rules as good conscience shall prescribe. Most respectfully the judge begs to observe, that it appears expedient to follow this rule as far as just and practicable; a departure therefrom may, though not suspected or thought of by the upper courts, unhinge the methodical arrangement of an office, and create for a considerable period among the native gomastahs much doubt and uncertainty regarding the precise nature of the duties they have to perform.

14. The Provincial Court consider the adjustment of claims of the nature in question by miscellaneous inquiry as less likely to be productive of litigation, and therefore direct such mode to obtain in preference to the institution of regular suits as heretofore. The zillah judge, with deference and submission, mistrusts such opinion, if exclusively held, grounding his dissent upon the actual experience of many years; and is apprehensive, should such orders pass, exclusive of a discretionary authority to be vested in the zillah judge, of putting them occasionally aside, that the court may be overwhelmed with the numerous claims of this class which will immediately be preferred. The judge, in the letter which accompanied his abstract of civil cases decided last month, pointed out the increase of business generally before the district moonsiffs since the enaction of Regulation II. A. D. 1828. On the decrease of the expense of litigation before them, the deciding claims preferred by third persons not previously in court as miscellaneous must be productive of the same results; indeed they have occurred since the Provincial Court passed their orders of the 26th of September last. It is also certain that fines will not so effectually prevent this as the order to file a regular suit. The stamp revenues will doubtless suffer, and litigation, through the operation of a miscellaneous instrumentality, increase, and occupy the judge to an extent which ought to be viewed with solicitude.

15. For instance, it is within bounds to assume nine in ten of such claims not only absolutely false, but connected more or less with conspiracy; they also involve (when of this character, and where prosecuted) perjury, and subornation of perjury, and too often forgery. They strike at the very arm and sinews of the law, and paralyze its best efforts for the alleviation of distress and the restoration of individuals to their property, subsequently to undergoing great mental anxiety, inconvenience, and expense, by an illegal effort to set its judgment and decrees at defiance. The question then is, how many of these nine claims will be prosecuted, should the claimant be referred to a regular course of law within a time to be specified? One or two probably will; affording evidence that the rest are groundless. Proceeding to a miscellaneous adjudication, the whole nine will undoubtedly be followed up.

16. Nor does the mischief stop here; the two cases adjudicated upon regularly, as above presupposed, will, in all likelihood, never come in appeal before the Provincial Court; not on account solely of the expense, but on account of the little probability of success in such cases. It is not, however, anticipating too much to suppose that the whole nine cases would, if decided upon as miscellaneous by the judge, be brought before the Provincial Court by return, however justly and correctly decided. The vicinity of the two courts, in addition to the great inducements which obtain as regards litigation, and the extreme propensity of the people of this district to such habits, puts the fact beyond a doubt.

17. Nor must the numerous receipts and returns which necessarily spring out of the miscellaneous practices be forgotten; such writings, whilst petitions shall be presented, must ensue, however correct the judge's proceedings. They have greatly occupied him during the present month, and in addition to the necessity of preparing the abstracts of miscellaneous inquiries, &c. which have been called for on such pettions, and the reconsidering the numerous records to which some of the cases have had reference (a mode of proceeding in reference to the original investigation involving more trouble and labour than most regular suits), have left him but little time to devote to his proper duties, and subjected him to great difficulties as regards the deciding the number of civil cases expected at his hands. The institution of regular suits will entirely obviate these results, and relieve both the Provincial and the Zillah Court.

18. The Sudder Adawlut have forbidden the zillah judges from entering upon the investigation of matters not strictly or regularly before them; the Regulations

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are express upon this subject. It may be questioned whether the introduction of the claims of various individuals (here there are six) by miscellaneous petition, does not militate against the spirit of the Regulations, provided such claims, originating generally with the grossest deceit, and upon that account not entitled to any favour, are permitted to proceed to trial after involving all the difficulties of a regular suit, without its form or other salutary check. It is also questionable whether it is not somewhat repugnant to established judicial principles and proceedings to allow so regular an instrument as a decree of court to be set aside by a miscellaneous proceeding. The decreased state of the file (the suits of 1827 are nearly all decided) will, moreover, admit of such claims being brought forward in a regular way, in the event of the judge falling into error, which will not in such cases happen after a regular appeal can be preferred. The judge, as noticed by the Provincial Court in their proceedings of the 8th instant, unfortunately, from a failure of memory, directed, in the instance there referred to, the successful suitor to sue the third person or mortgagee, instead of *vice versâ*; but an error so easily corrected, and in future so easily avoided, will not, it is hoped, be permitted to operate against a rule of practice in itself good and efficient, and analogous to the practice of the High Court of Chancery in England, as exemplified in a case familiar to the judge, wherein a bill was filed on the equity side for the payment of certain charges of counsel from the effects of a defendant then in the custody of the court; an order was made thereon to the effect that the counsel in question (they had pleaded for the defendant before the Chancellor) must come into court like any other suitor, and that the prayer could not, in the form then presented, be attended to.

19. Having stated what has appeared essential in reference to these papers being submitted to the Court of Sudder Adawlut, and added what has occurred as connected with the non-expediency of the contemplated alteration in practice taking place without exceptions, the judge begs to append some few remarks as founded upon several cases which have come before him, and which he has proceeded with as directed by the orders of the Provincial Court of the 26th of September last, and it is hoped they will lead to the recognition of the principle for which the judge contends, viz. the propriety of a discretionary right being vested in him to dispense with those orders, and to direct the proceedings by regular suit when the nature of the claim or circumstances attending it shall render such proceeding now consistent with judicial practice, or where the increase of such claims (generally false and litigious) may imperatively call for wholesome checks and restrictions.

20. The present case may with propriety be quoted, not less than six claims having been set up to the attached property. Miscellaneous Case, No. 305, may be more particularly alluded to. In this instance an individual named Ebrahim Khan affirmed himself to be the son, by one Sheruf Katoo, deceased, in whose favour a decree had been passed, and resisted the claims of Moroo Kaloo, Ameen Sahiba, and Alli Khan, the widows and son of the soubadar at whose instance the property of the defendant, Meerkaliel Ul Dien, had been attached. He denied the relationship of these people to the deceased soubadar, and filed a will which he affirmed to have been executed to him by his father, and which on examination was found to embrace the debt due by the defendant. The opposite party, viz. Nuroo Kaloo, Ameen Sahiba, and Alli Khan, in answer, denying the petitioner to be the son of the soubadar, or even to be related to him, affirmed him to be a foundling; they also produced a will to prove the relationship or the reverse of these people, as also the wills they produced. It became necessary to examine not less than 12 witnesses; to take a long examination from one of the parties; to send for a seal to compare with impressions; to cause translations to be made of their documents from the Persian language; to put a question to the Mahomedan law officer; and to draw up a laborious studied diary order, containing many paragraphs, and embracing more matter than half the decrees which issue from the office. This diary order one of the parties intends to appeal against, by petition to the Provincial Court, and hence there is a prospect, in reference to any falsehoods or misrepresentations he may think proper to insert, of further extracts and replies occupying much valuable time which it would be more desirable to dedicate to regular duties. With every respect, the zillah judge infers that it cannot be the intention of the Legislature or Court of Sudder Adawlut that a case embracing such distinct interests (it is impossible to limit cases of difficulty, they are continually occurring, and are often extremely complex and intricate)

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cate) should be treated as miscellaneous. It occupied the judge several days, and with others equally foreign to the miscellaneous department, effectually prevented him from passing final orders in various other cases strictly attached to that branch of duty.

21. Not to be unnecessarily tedious, two other cases, Nos. 84 and 256, may be mentioned; the former a case of mortgage, the latter of sale, which were set up in opposition to the execution of decrees. Both these cases ought, it is presumed, in regard to their character, to have been adjudicated in a regular way, and such it is respectfully considered ought to be the case where the inquiry is not simple in its nature. The judge, in concluding these remarks, begs to state that every thing that has fallen from him is purely general; he ventures to hope, though he has deemed it his duty to differ from the Provincial Court, that no expression or observation will be found in the slightest degree deficient in that respect and deference which it is not less his duty than his sincere and anxious desire to manifest. It must be obvious, certain hours of the day being devoted to his employers, that his object is to employ such time, which, once past, is gone for ever, in the most profitable manner; hazarding but few theories, he submits to superior judgment what upon careful consideration will, he humbly trusts, in reference to some experience he has had upon these subjects, appear no way to militate against any principle of justice or judicature, but well adapted to discourage that unfounded litigation by which so many are made to suffer; to dispatch business, to preserve established and apparently recognized customs, to secure the judgments and character of the judicial tribunals from that disrespect so obvious in the presentation of false and litigious claims, and to guard against deterioration of the stamp revenues of government.

Given under my hand and the seal of the Court this 29th day of October, A. D. 1828.

(L. S.) (signed) *G. J. Walters*, Judge.

Provincial Court, Western Division.

From the Judges of the Provincial Court to the Register of the Sudder Adawlut, Fort St. George.

Sir,

1. Adverting to a letter from your office, under date 21st February 1825, we however still feel ourselves once more called upon to bring the subject to the notice of the judges of the Sudder Adawlut.

2. Several instances have recently occurred wherein petitioners have asserted premeditated untruths, and which circumstance induces us respectfully to propose that a wilful misrepresentation of the proceedings held in the subordinate courts may be considered sufficient to constitute a contempt of this court, and after due investigation, report, and proof, such persons offending may be liable to fine, as in cases of contempt of court.

3. The sole object of this reference is to devise some check likely to prevent a recurrence of a circumstance alone calculated to mislead and impede the proceedings of both this and the zillah courts; not but that a discriminating line will at all times be drawn, and every attention shown by this court to persons really aggrieved by any orders passed on proceedings held in the several zillah and auxiliary courts.

(signed) *J. Vaughan.*, Second Judge.
Tellicherry, 11 July 1827. *W. O. Shakespear*, Third Judge.

Not recorded.

(No. 729.)

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India.

Sir,

Judicial Department.

With reference to my letter, No. 995, of the 22d December 1835, to the address of Mr. Secretary Macnaghten, I am directed by the Right honourable the

the Governor in Council to transmit a copy of the correspondence noted in the margin relative to the means necessary for effectually preventing frauds in the judicial department, by means of stamped documents, and to request that the same may be laid before the Government of India, in view to the subject being referred for the consideration of the Law Commissioners.

Extract from the Proceedings of the Sudder Adawlut, dated 9th June 1838, with Enclosures.
Extract from Minutes of Consultations, dated 23d July 1838, No. 728.

I have, &c.

Fort St. George, 23 July 1838. (signed) *H. Chamier*,
Chief Secretary.

(No. 728.)

Judicial Department.

EXTRACT from the Minutes of Consultations, under date the 23d July 1838.

Enclosure No. 1. Not recorded.

READ the following extract from the proceedings of the Sudder Adawlut.

(Here enter 9th June 1838, No. 93.)

1. The Right honourable the Governor in Council has read with deep interest the details furnished in the reports of the several subordinate courts, received with the above proceedings, on the nature and extent of frauds practised in the judicial department, by means of stamped documents, and has observed with satisfaction the attention given by them to the subject, and the suggestions they have offered for remedying the evil, which he considers to be very valuable, pointing out, as they generally do, what is also the opinion of Government, that the only feasible means towards that end is rendering the registry of deeds imperative. His Lordship in Council concurs in the sentiments expressed by the Court of Sudder Adawlut, upon a review of these reports, as to the provision necessary for effectually checking frauds of this description, and purposes, in accordance with their recommendation, to transmit a copy of the proceedings above recorded, and of all the papers laid before Government, together with a copy of this resolution, to the Government of India, for the consideration of the Indian Law Commission.

2. The Right honourable the Governor in Council approves of the rules detailed in paragraph 6 of the foregoing proceedings for the better management of the stamp department, and agreeably to the suggestion conveyed in paragraph 5, resolves that they shall be immediately adopted; he accordingly desires that instructions may be issued to the officers who have charge of the sale of stamps, to bring them into operation forthwith.

3. Ordered, that the foregoing resolutions, and the proceedings to which they have reference, be communicated for the information and guidance of the Board of Revenue, in reference to their proceedings of the 23d February (No. 88), 1837.

(True extract.)

(signed) *H. Chamier*, Chief Secretary.

(No. 93.)

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 19th June 1838.

Enclosure No. 2. Not recorded.

READ extract from the Minutes of Consultation, under date the 31st March 1837, forwarding a copy of an extract from the proceedings of the Board of Revenue, and requesting the Court of Sudder Adawlut to take into their consideration and suggest the best means of preventing frauds in the judicial department by means of stamped documents.

Also read letter dated the 5th June 1837, from the Provincial Court of Appeal in the Western Division, forwarding, with reference to this Court's letter of the 14th April last, copies and translations of the reports which have been received from the several zillah and assistant judges and principal sudder ameens in the Western Division, on the nature and extent of the prevailing frauds in the judicial department, by means of stamped documents, and on the best means of checking them.

Also read letter dated the 6th June 1837, from the Provincial Court of Appeal in the Northern Division, forwarding the reports of the several zillah and assistant judges upon the nature and extent of frauds prevailing in the judicial department by means of stamped documents.

Also read letter dated the 17th July 1837, from the Provincial Court of Appeal in

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in the Centre Division, submitting copies of the returns from the several judicial officers in the Centre Division, reporting the nature and extent of the prevailing frauds in the judicial department, and suggesting the means calculated, in their opinion, to check them.

Also read letter dated the 5th August 1837, from the Provincial Court of Appeal in the Southern Division, submitting copies of the reports of the judicial officers in the Southern Division, relative to the frauds in the judicial department by means of stamped documents.

1. At the suggestion of the superintendent of stamps, certain rules which had for their object the better control of the stamp department, and the enforcement of greater regularity in the accounts of the stamp venders in the provinces, were, on the 23d February 1837, circulated by the Board of Revenue to all collectors; leaving any suggestions for the suppression of frauds practised by litigants by means of stamped documents to be offered and considered by the judicial authorities.

2. Accordingly, under the orders of Government of the 31st March 1837, the several judicial officers in the provinces were directed to report the nature and extent of the prevailing frauds in the judicial department, and to suggest the best means of checking them.

3. The most prevalent species of fraud practised by means of stamped paper is stated to be the preparation of fictitious documents (receipts of money, mortgage bonds, and fraudulent transfers of land) upon old stamps, for the purpose of evading execution of the decrees of court.

4. The extent to which such forgeries are carried on in the provinces is so fully detailed in the papers recorded above, of which copies are submitted for the consideration of Government, that it seems necessary only in these proceedings to consider what can be done to check the facility with which, under the existing system, stamped papers of almost any date desired are procurable by persons who may require them for fraudulent purposes, and whether any effectual checks can be introduced by the Legislature, in addition to those provided by clauses 3d and 8th, section 10, Regulation XIII. of 1816.

5. Several of the officers in the provinces are of opinion that something may be done towards checking the practice of forgery, by providing better rules for the guidance of the venders of stamps; and of the rules suggested in the accompanying papers, the following meet the approval of the Court of Sudder Adawlut, and in their opinion might with advantage be immediately introduced by order of Government.

6. They are,

1st. That each kind of paper should be numbered, previous to sale or issue, in the collector's office, and entered in a book kept of the numbers, and showing the name and station of the vender to whom sent for sale.

2d. That on receipt of the paper the vender should enter the number of each paper in a book to be kept for that purpose, and that he should be required to sell the papers consecutively, according to their numbers, and not otherwise.

3d. That at the time of the sale of any stamp paper, the vender should be required to indorse each sheet with his signature, and to specify the date of sale, the name of the purchaser, and the purpose to which the paper is to be applied.

4th. That entries corresponding with the above indorsement should be made in the day-book required to be kept by every vender of stamps by clause 8, sec. 10, Regulation XIII. of 1816.

Lastly, That the indorsement should be according to a prescribed form, namely:

Number of the Paper.	Value of Stamp.	Name of the Purchaser.	For whom Purchased.	For what Purpose.	Date of Sale.
24, of 1838.	One rupee.	Mootoo, son of Vayloo, Combaconum.	Paristomby, son of Mootoo Sawmy, of Shealy.	For mortgage of land for 300 rupees, situated at , in the talook.	10th Jan. 1838.

7. But

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7. But though much might be done towards checking frauds by the enforcement of rules of the nature suggested above, yet the Court of Sudder Adawlut feel satisfied that nothing effectual can be accomplished without a new enactment, for it appears that although forgeries to a great extent are committed by means of old stamps which are hoarded up, and everywhere procurable for the purpose, the more numerous forgeries are perpetrated upon unstamped cadjans and paper which have been legalized by the rescission of sec. 9, of Regulation XIII. of 1816.

8. It would accordingly be advisable to restore the law to the state in which it stood before the enactment of the three first sections of Regulation II. of 1825, excepting that it would seem to be desirable to prohibit the use of stamped cadjans altogether, because of the extreme difficulty of detecting forgeries committed upon them.

9. But even to render this check effectual, it would, in the opinion of the Sudder Adawlut, be necessary to prohibit by a legislative enactment the transfer of stamped paper purchased, and to declare any writing thereupon null and void; or, in other words, any such document inadmissible in evidence in the courts if used by any other than the person or persons for whom it was purchased, or for any other purpose than that which at the time of purchase shall have been indorsed on the paper by the vender; and that no stamp shall be valid unless the writing thereupon shall have been engrossed within a specified period*, the purchaser being entitled to receive back the full cost of any stamp paper not used within that period.

* 30 days.

10. Many of the subordinate authorities have given their opinions that the most effectual remedy would be the establishment of an office of registry throughout the provinces, and the provision that no deed of sale, mortgage, transfer of land or other real property, bond, receipt, &c. &c. shall be admissible in the courts unless it has been duly registered.

11. There can be no doubt that this, of all others, would be the most effectual measure for checking fraud, forgery, and perjury that could be devised, and the Court of Sudder Adawlut are of opinion that if one notice is given that its operation will commence at a date sufficiently distant to prevent ignorance of it by any one, such a law would not be productive of injustice.

12. It is however a general measure of which the consideration will best be left to the wisdom of the Law Commission, who having been already placed in possession of the view taken of the subject by the Court of Sudder Adawlut, in their proceedings dated the 16th April 1829, and of copies of all other papers on the records of this court on the subject of a modified and extended registry, it would appear desirable that a copy of these papers also should be furnished to the Supreme Government, in view to their consideration by the Law Commission.

Vide Letter to Government, dated 3 Dec. 1835.

Ordered, that extract from these proceedings, together with copies of the papers referred to above, be forwarded to the Chief Secretary to Government, for the purpose of being laid before the Right honourable the Governor in Council.

(True extract.)

(signed) *W. Douglas*, Register.

From *W. B. Anderson*, Esq. Third Judge, for Register, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

1. With reference to your circular letter, dated the 14th April last, I am directed to transmit, to be laid before the judges of the Sudder Adawlut, copies and translation of the reports which have been received from the several zillah and assistant judges, and principal sudder ameens in the Western Division, on the nature and extent of the prevailing frauds in the judicial department by means of stamped documents, and on the best means of checking them.

2. With the exception of the judge of Malabar, who has stated his inability, without further information than he at present possesses, to "suggest any mode of checking the evil," it will be seen that all the officers alluded to concur in the necessity of something being done to check the facility with which, under the existing system, stamped papers of almost any date desired are procurable by persons who may require them for fraudulent purposes. With this view they

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suggest that every purchaser of stamped paper should be required to have it engrossed within some fixed period, say 10, 15, or 30 days from the date of purchase, in default whereof the stamp to be of no validity, though at any time within a month or other limited time* it may be returned to the office whence it was sold, either for repayment of the purchase price, or to be exchanged for fresh paper. Mr. Strange and the two principal sudder ameens † further suggest that every stamp sold should specify the purpose for which it is taken out, either by a separate stamp to be used for that purpose, as proposed by Mr. Strange, or by an indorsement to be made by the vender, as suggested by the principal sudder ameens.

* Mr. Strange would fix no limit.

† Of whom the one at Honore is acting for Mr. Starkey.

3. The judges of the Provincial Court highly approve of these suggestions, and they beg to recommend them as deserving of attentive consideration.

4. Mr. Bird and Mr. Strange are likewise advocates for the re-enactment of that part of Regulation XIII. of 1816, under which, except for small sums, no unstamped document was admissible in evidence, as also for a general registry of deeds; but these appear to the Provincial Court to be questions on which much difference of opinion may prevail, and which would seem to require mature consideration.

5. There are in these letters various suggestions of minor importance, to which it does not seem necessary more particularly to refer.

Provincial Court of Appeal,
Western Division, 5 June 1837.

(signed) *W. B. Anderson,*
Third Judge, for Register.

From *George Bird,* Esq. Judge of Zillah Court, Canara, to the Register to Provincial Court of Appeal, Western Division, Tellicherry.

Sir,

1. I HAVE the honour to acknowledge the receipt of your letter of the 20th ult., annexing circular from the Register to the Sudder Adawlut, calling upon the several judicial authorities to report, for the information of the Right honourable the Governor in Council, such suggestions as experience can furnish for the prevention of frauds in the judicial department by means of stamped paper, and in reply to state, that the prevailing cause of fraud in this district, as in others, is the facility with which stamped paper for any year can be purchased in the bazar, and the difficulty of ascertaining the authenticity of a bond or mortgage deed consequently great; and so long as a legal enactment allowing a document upon the payment of a prescribed fine to be admitted before the court exists, it will be difficult to obviate the frequency of forgery, but I am of opinion that it might in some measure be checked by the following rules, and for which I am chiefly indebted to my Register, Mr. Maltby.

1st. That all documents above a stated sum (say 25 rupees) must be on stamps.

2d. That the document must be executed within 10 days of the sale of the stamp, to be indorsed upon the paper and entered in the accounts.

3d. That any purchaser of a stamp returning the same within 10 days, shall receive back the purchase-money.

1st. Because the present rule, which enables a party to file a deed upon plain paper, by paying a specific penalty, obviates the good effect of the Regulation, and admits of a fraudulent party calculating between the value of the penalty and the probability of success. The rule proposed might give rise to cases of individual hardship, but these ought not to be put in competition with the general evil resulting from the prevalence of dishonest dealing.

2d. This rule would in many cases render forgery impracticable, viz. where the forger is confined to a certain date as that of his alleged deed, and is unable to find a stamp sold within 10 days of that date, otherwise it would render forgery more difficult, as the forger being limited to 10 days from the date of such stamp as he might possess, must run many risks of detection, from his alleging that it was executed at a period when the defendant could prove his absence, &c.; without this rule the forger can choose the date of the deed, and many are now produced before the court, written on paper sold many months or sometimes one or two years before the date of his alleged bond.

3d. This rule would obviate any hardship that might arise from the previous one, since any party who found himself unable to execute his deed within the limited

limited time might recover the money expended on the stamp. The time also being limited, this rule could not cause any material derangement in the accounts of the collector. But it is chiefly proposed as tending to diminish the number of blank papers floating in the district, since many of those who have bought stamps, not with the specific intention of retaining them until their value has risen, would recover their money in preference to retaining the stamps for the chance of selling them for a dishonest purpose at an advanced price, but after a long period.

2. These rules might, as I have already observed, do something; but the great and effectual check to forgery would be to render it obligatory for every one to register his deed before the sircar authorities within a prescribed period of its execution, a measure which I understand has been submitted for the consideration of the Law Commissioners now assembled in Bengal.

Zillah Court, Canara,
8 May 1837.

(signed) *George Bird*,
Judge.

(No. 186.)

From *Hemayet Ally Khan*, Acting Principal Sudder Ameen at Honore, to the Register to the Provincial Court of Appeal for the Western Provinces.

Sir,

1. I HAVE the honour to acknowledge the receipt of your letter of the 20th instant, accompanied by copy of one from the Register to the Court of Sudder Adawlut, dated the 14th instant, calling upon me to report the nature and extent of frauds in the judicial department, by means of stamped documents, and suggest the best means of checking them.

2. The frauds which are presumed to prevail in this district from the cases that have come before the judicatories, are as follows:—

3. According to the present practice the public vender of stamped papers indorses on papers sold the names of the purchaser and his father, and the place of his residence, with the date. Individuals go to purchase stamped papers in person, or sometimes send others for the purpose, as it is impossible that every purchaser should go personally. The vender indorses the name, &c., of the purchaser, as dictated by the person going to fetch the paper. The purpose for which the paper is required is not indorsed. Under this practice there is an access to fabricate a document immediately on paper thus purchased. There is also access to preserve a number of stamped papers to be available for some fraud at a future period, as they may remain with a person without any bad design at the time of keeping, but at a future period the keeper of them may fabricate documents on the same by putting to them the date of the sale or such subsequent date as suits his purpose. Another way of defrauding is this: one may get somebody to fetch a stamp paper from the public vender by giving him a lie, that the same is required by the individual whom he wishes to defraud, whose name is accordingly indorsed as the purchaser by the vender. The defrauder may fabricate a document on the paper thus got, either immediately, or at a future period.

4. It is presumed that the frauds described above are actually prevailing to some extent in this district, and I respectfully beg to suggest the following rules, which I consider to be the best for checking such frauds.

1st. Stamped papers are to be purchased by parties executing documents, and not by those who obtain them.

2d. Besides indorsing, as at present, the names of the purchaser and his father, and the place of his residence, the public vender is to make the undermentioned indorsements.

3d. If the paper is required to draw up a document, the nature of the document is to be indorsed, as also the names of the party to whom it is intended to be executed, that of his father, and the place of his residence.

4th. If the paper is delivered to a person on the part of the purchaser, the name of such person and that of his father, with the place of his residence, should also be indorsed.

5th. An extract copy of the indorsement made on every paper required to draw up documents, is to be entered in the book kept by the vender, and attested by him with his official signature.

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6th. If the paper is required to draw up a pleading or petition to be filed in a court, or for taking copies or licences, it is sufficient that it be thus indorsed: "For the purpose of the court," "For taking copy," "For writing a licence."

7th. The identical document, the nature and parties of which were indorsed on the stamp paper, should be drawn up on it, but not any other document. Documents drawn up contrary to this rule should be held invalid; because if a violation of this rule be allowed in consideration that *bonâ fide* documents should not be invalidated, it will give access to fabrications.

8th. Documents are to be written 15 days from the date of the purchase of the stamped paper. No document is to be written upon it after that time, but another should be purchased for the purpose. Any documents written contrary to this rule should be held invalid. Stamp papers remaining without being used for documents within that period, are to be available only for pleadings or petitions to be filed before, or copies to be obtained from the court or the collector. If the person who purchased such papers does not require them, he may sell them to another by indorsing the sale on the same under his signature.

9th. If the papers purchased for one of the public purposes specified in Rule 6 remain unused, they may be used for any other of such purposes, or sold to another, by indorsing the sale under the signature of the seller.

5. The rules suggested above are not, however, sufficient to check the frauds specified in the latter part of paragraph 3; because the public vender of stamped papers may be imposed upon, whenever he is not certain of the identity of the person who comes to purchase a paper for himself, or the identity of the person who comes for it on the part of another. I therefore beg to suggest the following rules:—

10th. The tahsildar is to have, at the end of each month, a statement of all stamped papers purchased in his talook for the purpose of drawing up documents, which statement is to be composed of the entries regarding such papers, extracted in full from the book kept by the venders. The tahsildar is immediately to send exact extracts of this statement to the police ameens and sub-officers of district police, relative to such stamp papers sold in their respective jurisdiction.

11th. The tahsildar, police ameen, and sub-officer of district police, when in possession of the statement specified in rule 10th, are immediately to summon before them all the parties therein specified to attend with their documents, viz. those who intended to execute the documents, and those to whom they were intended to be executed. The parties to whom the documents were intended to be executed, if unable to attend in person, may send authorized vakeels; but the personal attendance of the parties who intended to execute the documents is on no account to be dispensed with, but is to be compelled whenever they do not voluntarily attend. The said officers are to ascertain by verbal inquiry the identity of the parties who executed the documents, and whether they admit the authenticity of the same; as also whether the documents are the identical ones that are specified in the aforesaid statement, as well as in the indorsements on the documents. They are to indorse the facts thus ascertained on the back of the documents, and attest such indorsements with their official signatures, and then to give back the documents to the parties who produced them. They are also to enter copies of such indorsements in the aforesaid statement, in a column to be kept blank for the purpose, and attest such entries. If the parties said to have executed the documents deny their authenticity, the officers are to institute the usual proceedings to ascertain whether they are forgeries. If so, the parties concerned in the crime are to be sent to the criminal court. If the authenticity of the documents is proved, the fact is to be indorsed on the back of the same, with the attestation of the officers, and the documents given back. When the said officers find that stamped papers, purchased for the purpose of drawing up documents, have not been used till 15 days from the date of the purchase, they are to warn them to draw up any documents upon such papers as prescribed in rule 8th. They are to indorse such warning on the back of the papers under their official signatures. Each of the said officers is to enter copies of all documents produced before him, with the indorsements made by him thereon, in a book to be kept for the purpose. Police ameens and sub-officers of district police are to have such books separate for each month, at the end of which they are to forward them to be lodged with the records of the tahsildar.

6. In this district documents are executed on plain paper and cadjan in greater

greater numbers than upon stamped papers, consequently frauds, by means of documents upon plain paper and cadjan, appear to prevail here to great extent; and though I was not called upon to report upon such frauds, I trust I will be pardoned for submitting the following rules, which I consider to be the best for checking the same.

12th. All documents on plain paper or cadjan, excepting those specified in rule 13th, are to be produced before one of the heads of district police aforesaid, in whose jurisdiction they were executed, in one month from the date of their execution. Documents not produced according to this rule are to be held invalid. On the documents being produced by the parties who obtained the same, or their authorized vakeels, the head of district police is to procure the personal attendance of the parties who executed the documents. He is to ascertain by verbal inquiry the identity of the parties who executed the documents, and whether they admit the authenticity of the same. He is to indorse the facts thus ascertained on the back of the documents, and attest the indorsements with their official signatures, and then to give back the documents, after entering copies thereof with the indorsements in his book, kept as directed in rule 11th. If the authenticity of the documents is denied, the mode prescribed in rule 11th, for stamped documents in such cases, is to be observed.

13th. All documents on plain paper or cadjan, for money or personal property, not exceeding in value the sum of 10 rupees, as also all pottahs and muchilkas interchanged by landholders and their tenants for the temporary lease of land of whatever amount, but not those for perpetual lease, are to be produced before the potail and curnum of the village, within one month from the date of their execution. Documents not produced according to this rule should be held invalid. On the documents being produced by the parties who obtained the same, or their authorized vakeels, the personal attendance of the parties who executed the documents is to be procured. The potail and curnum are to ascertain by verbal inquiry the identity of the parties who executed the documents, and whether they admit the authenticity of the same. They are to indorse the facts thus ascertained on the back of the documents, and affix their signatures to such indorsements; and further, cause two of the principals of the village to attest the same. They are then to give back the documents after taking copies thereof with the indorsements, which copies they are immediately to forward to the tahsildar to be entered in his book. If the authenticity of any documents is denied, both parties and the attesting witnesses to it are to be immediately sent to the head of the district police, in whose jurisdiction the execution is said to have taken place, who will thereupon institute the necessary proceedings to ascertain whether it is a forgery or not, as prescribed for documents produced before himself.

(signed) *Hemayet Ally Khan*,
Acting Principal Sudder Ameen.

Zillah of Canara, Honore,
27 April 1837.

From *Syed Zeoo-oodin*, Principal Sudder Ameen at Sirsee, to the Register to the Provincial Court, Western Division.

THE representation of the Principal Sudder Ameen of Sirsee, in the zillah of Canara.

I have received the translation of your letter of the 20th ultimo, accompanied by one from the register to the Court of Sudder Adawlut, dated the 14th of the same month, calling upon me, conformably to the order of the Governor in Council, to report the nature and extent of the frauds in the judicial department by means of stamped documents, and to suggest the best means of checking them, and have understood the contents thereof.

1. The frauds committed by means of stamped documents are as follows:—

People committing frauds are in the habit of purchasing and keeping by them stamped papers; and whenever they have occasion to fabricate any documents, they execute on them title-deeds, bonds, receipts, &c.

They (the purchasers of such stamped papers) likewise sell them to others, at such prices as they think proper, and thereby subject the latter to losses.

I beg to suggest, as follows, what appears to me to be the best means of checking the said frauds.

2.—First. That orders should be given to the public venders of stamped paper,

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that when they sell such paper to any person, they should, besides indorsing thereon the name of the purchaser, ascertain from the purchaser, and then write thereon, for what purpose it is sold; and the purchasers should be strictly prohibited from ingrossing on them anything but that the purport whereof is indorsed upon it, otherwise such documents to be considered not valid.

3.—Secondly. That the venders of stamped papers should also make an indorsement thereon, stating the period when the documents are to be written on them, as stated by the purchasers; and the purchasers should be required, in case they fail from any cause to write the documents on such papers within the stipulated period, to take back such papers to the venders, and cause a fresh period to be written thereon. That the local kurnums should (be directed to) witness the execution of all documents executed in their districts respectively, and to send a monthly report either to the tahsildar or peishcar, detailing the names of the parties, and the places of their residence, the value of the papers, the dates of the sale of the stamps, and of the execution of the documents, as also the period limited for their execution. That should it appear either to the tahsildar or peishcar, from the accounts of the papers sold, that no document was executed on any of the papers sold within the stipulated period, they should take back such paper from the purchaser without paying him the value thereof, and deposit it among the public records, and carry the value thereof to the public account as a fine on the purchaser. Further, that a positive order should be given that one person should not give to another a paper purchased by him.

4.—Thirdly. That all the documents mentioned in section 9, Regulation XIII. of 1816, as well as all others executed either on stamped or unstamped papers, should be brought either before the nearest district moonsiff or the tahsildar, within a period that may be fixed by the Governor in Council, when that officer should hold an inquiry on the subject of the person who drew out, or caused them to be drawn out, and then he should date the said documents, and affix his signature thereto, without subjecting them to pay the amount of fees directed in section 14, Regulation XVII. of 1802. If this be done, it cannot be doubted that every one will cause all his documents to be signed by some one of the said officers, since the fees will not be levied from them. Further, it should be made known publicly that no document will be considered valid without the signature of one of the said officers.

Under these rules, I think the frauds will not be prevalent, but will be checked.

(signed) *Zeoo-ooden*,
Principal Sudder Ameen.

Sirsee, 2 May 1837.

From *T. L. Strange*, Esq. Assistant Judge of Malabar, to the Register to the Provincial Court in the Western Division.

Sir,

1. Believing that the prevailing frauds in the judicial department, which are the subject of your letter to the auxiliary court of Malabar of the 20th ultimo, are those practised by parties before the judicial tribunals in conducting their litigation with each other, more particularly such as may be checked by means of stamped documents, I trust that, although temporarily removed from the auxiliary court, I may be permitted, on a subject of so much importance to the public, and interest to those concerned in the administration of justice, to offer the following observations and suggestions, which I was unable to prepare in reply to your letter before my departure from Malabar.

2. The want of a peremptory law of registration, the latitude given for the use of blank paper or cadjans in the execution of deeds, the defects of natives' signatures, and the ease with which they may be counterfeited; the facility of obtaining false witnesses, to support false documents, and the impunity attendant on the crime, from the difficulty of obtaining proof sufficient for conviction, have rendered forgery an offence of frequent occurrence.

3. To a forged deed it is usual to assign a distant date, in order that the means of exposing the fraud may be difficult of attainment. Stamps and blank cadjans are laid up in store, so as to attain the signs of age, and become the objects of a regular and a highly profitable trade, antiquity much enhancing their value. The date of sale on a stamp is carefully obliterated when posterior to the

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the date attributed to the instrument, and the writing is made to look ancient by smoking it, putting it in mud, damping and pressing it down with weights, and exposing it partially to the attack of white ants. The concluding process is to suborn two or more individuals to swear to the execution of the deed. The risk of punishment being next to nothing, such witnesses are procurable in abundance at a low price.

4. It is difficult to state the extent to which these frauds are carried, as the means provided for bringing them to light have been ineffective. The best proof that they do exist to a fearful degree is the notorious distrust of evidence evinced by the courts in Malabar; a distrust amply justified by the prevalence of forgery and perjury in the district, but which, while it guards against the commission of a new and positive evil, often destroys the power to do good.

5. Since the year 1829, but two persons have been convicted of forgery, under commitments from the auxiliary court. In both cases, the prosecutor was the Rajah of Cartinaad, the individual of the highest rank and consideration among the inhabitants of North Malabar. During the same period there have been but three individuals convicted of perjury under Regulation VI. of 1811, and ten under Regulation III. of 1826.

6. The prisoners convicted under Regulation VI. of 1811, were concerned in one and the same case, that of Cotala Pockur, and others disposed of in No. 1, second additional calendar, first sessions, 1834, under very peculiar circumstances; they confessed their guilt, but it is possible that, independent of their confessions, there was sufficient evidence against them to have ensured their punishment.

7. Of the persons found guilty under Regulation III. of 1826, but two (named Tollam Coottially, and Upalacundy Awoola,) were practised offenders; the rest were the ignorant misguided people, which the nature of the means by which their falsehood was exposed would demonstrate.

8. On the other hand, in proof of the prevalence of perjury, I may refer to a record kept by me for six months (from July to December 1836), which shows that within that period I had to decide upon the evidence of 116 persons, who gave testimony to conflicting circumstances, the one party against the other. Out of these 58 were pronounced unworthy of credit. My early departure from the station has not permitted of my adding to this number the sum of those whose depositions were distrusted in cases wherein no opposing witnesses appeared.

9. The above striking facts will have justified my assertion, however unwillingly the confession is made, that false evidence prevails to a fearful extent in Malabar, and that the means of preventing it may almost be said not to be in existence.

10. The most complete check against the crime of forgery would be the establishment of a comprehensive system of registry. On this subject I was induced some years ago to draw up a paper, having a reference to Malabar; not, however, with the impression that the measure therein advocated should have only local application. The views which I then entertained have undergone no change; I venture therefore to submit them with this communication.

11. Exclusive of each a registry of deeds, much might be done towards checking fraud by means of stamped documents.

12. The first measure which I would recommend, would be the re-enactment of so much of section 9, Regulation XIII. of 1816, as made certain documents inadmissible in evidence unless executed on stamps. I would further suggest the adoption of rules such as the following.

1st. Every stamped paper or cadjan to have two stamps, one to express the value thereof, the other the use to which it is to be put, which might be done by means of the words "proprietary right," "mortgage," "pledge," "contract," "security," "simple bond," "receipt," "law paper," &c. and no stamp to be valid but for the purpose therein expressed.

2d. No stamp to be sold but to the parties directly concerned in employing it, or to their relations, servants or dependents acting as their vakeels.

3d. The names of the parties, and of their vakeels, when such are employed, together with the date of the sale, to be written on the reverse of one of the stamps, and the number of the stamps corresponding with the book in which it is registered to be written on the reverse of the other stamp.

4th. No stamp to be valid but for the use of the parties on account of whom it may have been sold.

5th. No stamp to be valid unless the deed engrossed on it may have been executed within 30 days from the date of the sale of the stamp.

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6th. The holder of every unemployed stamp to be entitled at any time to recover its value, by returning the stamp, which should then be transmitted to the superintendent of stamps for the purpose of being destroyed.

7th. No officer holding a situation inferior to that of moonsiff or tahsildar, to be authorized to sell stamps.

13. A forged deed being of no avail without false witnesses to sustain its authenticity, it may not be considered out of place to offer some observations on the means of putting down perjury, and generally of eliciting the truth in oral examinations.

14. The precautionary forms in use in conducting such examinations, are the administering an oath to the witness with a warning of the penalties attaching to perjury, and the taking down in writing the questions put to him and his answers thereto.

15. It is a fallacy to suppose that by exacting an oath from a witness, who comes prepared to give false evidence, he will be deterred from fulfilling the task for which, with all its attendant circumstances, he may have been engaged. An oath taken in a place of public worship is in most instances respected, and this because the breach thereof is generally believed to entail certain punishment, temporal, as well as in a future state, and it will continue to be so respected as long as the resort to the measure is as at present unfrequent. Oaths administered in a court of justice are treated with no such veneration, for no such fear of punishment is attendant upon their violation. The most gross and palpable falsehood may be sworn to, and go unpunished, not because a doubt may exist that the testimony given was wilfully and deliberately false, but because the means of proving the opposing truth may be, as in nearly every instance they are, wanting, or some technicality may intervene to screen the offender. He, while he knows that his crime has been detected, knows that the law is powerless to punish him, being probably at the same time ignorant or incapable of comprehending the reasons why, for an offence so detestable, and so frequent of commission, he should be spared the punishment solemnly denounced to him ere he incurred his guilt.

16. The cumbrous record which we now make of the depositions of witnesses, is an impediment to the eliciting of the truth, rather than a safeguard against falsehood. A judge, harassed with multifarious and pressing duties, cannot devote his undivided attention to the examination of a witness whose every word has to be taken down in writing. The pause which such an operation creates between each successive question and answer, is liable to break the chain of cross-examination, and the witness has ample opportunity to compose his countenance and devise such answer as may suit his particular interests. A cunning gomastah may manage to pervert the statements of the witness, who seldom interferes to check error in the record of his examination when read out to him in one continuous drone. The length to which trials, by the course in question, are necessarily extended, in few instances allows of a case being brought to a conclusion on the same day on which it was commenced, and during the adjournment the witnesses will be tutored to give testimony in concert with those first examined, and to supply all such deficiencies in the evidence as may have been remarked to exist.

17. The rules which I would venture to advocate in substitution for those in force are:

1st. The requiring of an oath from a witness to be discretionary with the judge, who should employ it only when it appeared probable that it would be binding, and in such form and place as would make it most respected.

2d. Parties in civil suits to be liable to be called upon to make oath to the truth of their pleas.

3d. No record of examination to be requisite but the notes made by the judge of the statements of the party examined, which should be explained to such party, and signed by him, if correct; a discretion, however, being left with the judge or his superiors to have the evidence taken down more fully, if thought in any instance desirable.

4th. Every statement made in evidence before a competent tribunal, by a witness or a party to a suit, which should be self-evidently false, or be proved to be such, and given with intent to deceive, to be punishable, after reference to higher authority, or to a special jury or punchayet, if on oath, with the penalties

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now prescribed for perjury; if without oath, by tusheer and imprisonment, for a period not less than six months, and not more than one year.

18. The exacting an oath upon all occasions, from every class of witnesses, tends to destroy that reverence with which an appeal to the Divinity should be made, and, in many instances, to add profanation to the guilt of falsehood. It would, however, be useful to hold this solemn appeal *in terrorem* over such as may have the fear of God before them.

19. The courts in India being of conscience, it does not appear unreasonable that truth should be made as obligatory upon litigants before them as upon witnesses.

20. The notes of the judge should embrace every essential particular deposed to before him; to record any further matter is to impede the progress of justice. The act of making any abstract of the evidence, when in the course of being given, would insure to its scrutiny and examination the close undivided attention of the judge. Less time being required for the recording, more might be bestowed on the sifting of evidence. One of the most important duties of the courts would devolve upon the presidents therein, with little or no interventional aid from ministerial officers, the corrupt purchase of whose services would cease in a great measure to be thought profitable. The record of the evidence being compressed within the narrowest bounds, and kept in the English language, the review of decisions brought forward in appeal would be much facilitated. The system recommended need no longer be considered a subject for experiment; it is pursued in Ceylon, I believe, with the best effects.

21. The great hindrances to the punishment of those who may give false evidence are, the necessitating that the particular truths, in direct opposition to the falsehoods deposed to, should be incontrovertibly established, and the investing the proceedings in such cases with more than ordinary technicalities. It would appear an ample reason for awarding a penal sentence, if a clear and positive falsehood should be deposed to before a competent tribunal, with the intent of deceiving it. When sufficient evidence of the falsehood may have been obtained, what good end, it may be asked, is gained by requiring that the opposing truths should be discovered, and proved; and that, failing such proof, unattainable as it is in the generality of cases, the party guilty of the falsehood should be acquitted of his offence, when even the opposing truth may have been established; why should a mere technicality have weight to shelter the criminal from punishment? Every precaution against a hasty or erroneous conviction would have been taken, if the same rules were established for the suppression of false evidence in general, as have been provided by Regulation IX. of 1832, for the suppression of one branch of false evidence in particular. That which would clearly convict an individual, prosecuted under the above Regulation for having made a false complaint before the native police, would be wholly insufficient to procure his punishment had he succeeded in deceiving the lower authority into crediting his complaint, and continued it upon oath before a higher tribunal: thus the very circumstances which highly aggravate the offence operate to exculpate the offender.

I have, &c.

Mangalore, 10 May 1837.

(signed) *T. L. Strange,*
Assistant Judge of Malabar.

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1. The introduction of a law for the registration of deeds, by which the transfer of property is effected, appears to be particularly called for in Malabar, whether as regards the multiplicity and distinct peculiarities of rights on land in that province, or the many evils arising from the extent to which forgery and litigation is there carried.

2. The value of land, and the ambition to obtain titles thereon, have been such, that tenures of the most graduated and complex nature have been created, establishing claims so minute and extended in variety, that but few of the officers

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officers of Government, even native as well as European, are conversant with the conditions, or indeed aware of the very existence of all these subtle and minute distinctions of rights. In most of these transactions, and more especially where the transfer is that of the proprietary right, to render the title complete and incontestible, it is necessary that the old documents, though cancelled, and of no value in themselves, should be transferred, accompanied often by deeds of relinquishment or confirmation by junior members, and always by deeds of apprizal to all who hold subordinate tenures on the soil. It may be well conceived to what an extent such documents must have multiplied, where the transfers of the same land have been frequent, and the fact is made apparent by there being no dwelling of respectability without its ollapetty, a box for the express purpose of containing these records, and by a bundle of deeds being nearly as frequent a personal accompaniment as the pishancutty (knife) or the umbrella in common use among the inhabitants of Malabar.

3. These minute gradations of tenure, and the multitude of documents upon which they are assured, manifest a high degree of anxiety in the people to obtain vested rights on the soil, and to secure these rights by every precaution in their power. Before the prevalence of the British dominion in Malabar, the rules rigidly observed in the transfer of landed property rendered fraud nearly impracticable, and furnished a security for such possessions as complete as would the law of registration, though effected in a more cumbrous manner. The text then in force is to be found in the "Kerala Ulpath," dictated by Parseram, the reputed founder of the province. It enjoins that the transfer of the proprietary right should take place in the presence of the neighbours, the caste people, the Rajah, and the relatives, and with their concurrence; and that water, with gold placed therein, should be presented (by the old to the new proprietor). The wording of ancient title-deeds is expressive of the observance of the above rule. It was further customary to fix the transaction on the memories of the persons present by bestowing fanams, according to a recognized scale of proportion, to each of the classes above specified, as also to the writer of the deed and the witnesses thereto. These forms, once essential to such important transactions, have now fallen into general disuse, and the vigilance of our laws is the main safeguard trusted to against the frauds to which the number and nature of the land tenures in Malabar render landholders peculiarly exposed.

4. The existence of forgery in Malabar to a fearful extent must have been apparent to all who have had experience in the district. The proneness of the inhabitants to litigation must have been equally observed. Not a family of the least consideration but has been involved in law proceedings, and hardly a witness is examined but appears to have been all his life conversant with courts and cutcherries. The prevalence of litigation and forgery may be traced to the number and complexity of land tenures, often ill understood and ill defined, to the line of descent falling generally to nephews instead of to sons, and to each member being considered entitled to a share in family property, although no actual division may have been made; to general poverty, producing pecuniary distress, and leading the people to prey upon each other, and to the facility of suborning perjury for the sustainment of forged documents.

5. A decided though far from an adequate check upon forgery was afforded by section 9, Regulation XIII. of 1816 of our Government, declaring documents relating to money transactions on unstamped papers or ollas, not recognizable as evidence in a court of justice, and making it therefore impracticable that any prior date should be attributed to the deed than that of the day certified on the stamp as that on which it had been sold. This enactment has, however, been rescinded by Regulation II. of 1825, giving parties the power of filing documents not inscribed on stamps, on payment of a heavy penalty. The facility so given is taken advantage of to a great extent, and it is to be feared that it has led to the increase of forgeries. It would be useless to appeal to our criminal files for proof as to the degree to which the crime prevails, as it is in its nature one so difficult of exposure, and so seldom the subject of prosecution. The business of the civil courts in Malabar will afford the best means of judging of the prevalence of the crime. In almost every strongly-contested cause, particularly in such as relate to questions of ancient rights on land, accusations are urged against the opposing party of the fabrication of his documents. Unstamped deeds are occasionally

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sionally filed, with the prescribed penalty, which bear dates when they were inadmissible as evidence under section 9, Regulation XIII. of 1816, before alluded to. A very common ground of judgment in decrees, particularly of the native tribunals, in rejecting the evidence adduced, is the newness of the olla (universally used for those purposes) upon which the deed is inscribed, or of the writing itself, or the appearance of attempts having been made to give the deed the look of antiquity, which are sometimes very palpably manifested; and lastly, blank ollas are often kept by individuals for the purpose of acquiring the symptoms of age, so as to allow of deeds bearing an ancient date being engrossed upon them.

6. The only check to the perpetration of the crime of forgery offered by our legislature is the punishment denounced on a formal conviction of the offence. That the provisions of the penal statute are little better than a dead letter, and certainly no effective remedy or preventive, may be admitted when it is known that for the last five years (from 1829 to 1833 inclusive) only two individuals have been convicted of forgery throughout Malabar, one by the committal of the criminal court at Calicut, and one by that at Tellicherry. In each of these instances the parties whom it was attempted to defraud were natives of the highest ranks, and to this circumstance chiefly is the success of the exposures to be attributed.

7. If the prevalence of forgery to a great extent be allowed,—a crime unequalled in its effects on the security of property by the most daring robberies, and one which corrupts society through its highest grades, leading also, as its direct consequence, to the horrible crime of perjury;—if it be admitted that, while the temptation to its commission is great and unceasing, the prospect of detection and punishment is so remote as to be quite insufficient to deter offenders by acting upon their apprehension;—any measure which has for its object the prevention of this crime must surely be deserving of the most serious and attentive consideration.

8. It is difficult to devise a remedy more complete than the passing of a law making it imperative that all deeds which should be considered deserving of such protection should be registered at a public office, in the presence of the parties concerned, and the witnesses to the transaction, within a prescribed limit from the date of the transaction, and after full opportunity, by the issue of proclamations, had been afforded to parties whose interests might be affected thereby, to oppose the registration. Such a registry would put it out of possibility that an heir should be sued fraudulently after death of his ancestor on a fictitious deed said to have been passed by him in his lifetime. It would prevent the honest creditor being defrauded by a plea that no such deed as that produced by him had ever been written, or that it had been executed without receipt of the full amount of value purporting to have been received, or that the money had been repaid. It would prevent the purchaser of land being defrauded of his rights, in part or in whole, by the appearance of prior claimants on the property; and a mortgagee, in like manner, by the production of prior sales, mortgages, and minor incumbrances. It would afford the means, by the publicity of the registry, of obstructing all attempts at illegal sales and transfers of land by one member of a family to the prejudice of coparceners. It would render nugatory all efforts to evade payment of a decree, by the putting forward of fictitious claimants on the debtor's property. It would, in short, so effectually guard all transactions between people who are but little checked in their dealings with each other by moral rectitude, or the fear of public disrepute or infamy, that opportunity for fraud and chicanery could but seldom arise; while the power to detect such crimes, and finally to put in force the judgment that in each instance might be passed by the courts of justice, would be strengthened and made as efficacious as possible.

9. The natural effect of the operation of the law of registration would be to raise the value of property of all descriptions, by rendering its tenure secure, and to improve the morals of the people, by striking (it may almost be said) out of existence a crime of great magnitude, and one which may enter into every important concern in life. It would most materially reduce litigation, and would

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simplify the investigation of claims when litigated*. It would produce incidentally another and a most important advantage, namely, that by the registration of all deeds connected with landed property the means of information upon which the revenue is assessed, and the want of which is so much felt, would be furnished in a clear and unexceptionable form. Almost all land in Malabar falls at one time or other under mortgage incumbrances, and in these deeds the rent of land is invariably expressed, as it is out of the rent that the mortgagee has to look for the proceeds of his money, and it is upon the rent that the revenue in Malabar is adjusted.

10. The objections which have been urged against an enactment such as is proposed, have far less force in this country than they may be allowed to have in England. There is no feverish anxiety among individuals respecting the exposure of their private affairs, and but little commercial credit to be shaken by the manifestation of the resources upon which it is based; and to this objection it may be replied generally, that where the law of registration has been actually established, the disposition to pry into the affairs of other people has been so little displayed as to make the fear groundless. The abuse of the enactment by the registration of false claims, which become thereby perpetuated, or the disputes to which it may give rise, by the negligence and omission of parties to register their transactions within the time specified by the law, have been urged against its adoption. Every human institution is liable to be similarly taken exception to; and objections such as these can only be admitted to be valid if the means of guarding against the occurrence of such abuses or oversights are so imperfect as to leave room for fearing that the evils to which the law may give rise will predominate over the benefits to be expected from its operation; the evils, be it remarked, being grounded on surmise and accident, while the benefits are positive and certain.

11. The general provisions of the proposed Regulation might be:—

1st. That no deed, executed after the promulgation of the enactment giving title or claim of any description upon real property, exclusive of that of mere occupancy, should be admitted as evidence before a court of justice, unless registered in a public office under the rules prescribed for the purpose within days from the date of the transaction.

2d. That it be left to the option of either party to a transaction embraced by the above description, which may have occurred prior to the promulgation of the enactment, to apply to a competent tribunal within a specified period, and to compel the opposite party to appear and effect the registry of the document passed thereon, provided that both parties should admit the execution thereof, and it should appear to have been a fair and honest transaction.

3d. That it be left to the option of either party to a bond, executed after the promulgation of the enactment, for payment of money, grain, &c. unassured upon real property, to apply to a competent authority within days from the date of the transaction, or if executed prior to the promulgation of the enactment, within a specified period therefrom, and compel the opposite party to appear and effect the registry of the bond, under the rules prescribed for the purpose, provided that the execution thereof be fully admitted; and that no bond

* A suit, besides being subjected to risk by default, may go through three regular hearings, the original appeal, and special appeal. When execution is sued out the defendant may oppose carrying the decree into effect by pleas of payment, adjustment, &c. on which a new suit, liable to every process of litigation, may arise. The parties may die, and the defendant may deny the rights of those appearing as plaintiffs' heirs, or on the defendant's demise, his heirs may deny their liability. Pleas of such importance as generally to compel resort to a new suit; when the property is attached, claims thereon may, and generally do, pour in. (The decree in No. 19 of 1812, on the file of the Provincial Court, Western Division, gave rise to 99 such claims.) Every one of these claims requires a summary hearing, and even then, in strongly-disputed cases, must be brought to the test of a suit, to which the creditor is necessarily a party. The debtor may be thrown into gaol, and proceed to swear himself a pauper. The plaintiff is of course, at a great disadvantage, compelled to show that he has available assets, or his release follows; and then every prospect of receiving payment vanishes. At every stage the law of registration would supply a direct and instant remedy, or make the means of ascertaining the truth simple and easy.

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bond of the above description, being for a sum exceeding rupees, which may purport to have been executed after the promulgation of the enactment, and which may not have been duly registered, should be admitted as evidence before a court of justice, if the execution thereof should be denied on oath by the party alleged to have executed it.

4th. That if the period prescribed for the registration of any document should have expired, and both parties thereto should still be anxious to have the registry effected, and should appear and prove before a competent tribunal that the transaction was a fair and honest one, showing at the same time satisfactory cause for the default, such tribunal might be empowered, on levy of a specific penalty, to authorize the registry at any time within years from the date of the transaction.

5th. That the benefits of the law of registration under the prescribed rules be declared open to any transaction whatsoever between party and party, but that no document should be prejudiced by the absence of registration, except such as may have been declared inadmissible before a court of justice unless duly registered.

6th. That every document which may have been duly registered, should be considered in full force and operation, unless cancelled or otherwise affected by a subsequent document, which may in like manner have been registered by the act, or with the knowledge and concurrence of the parties interested therein.

7th. That the simple act of the registry be considered sufficient warrant to enable the party holding a document to sue out execution thereof in a summary manner, unless the opposite party should be able to show some reasonable grounds for challenging the registry, and prepared to bring them to the test of a regular judicial inquiry.

12. The foregoing provisions would render the registration of all vested rights on real property, arising after the promulgation of the law, imperative, and of money dealings on bonds unconnected with real property, optional, but under strong inducements to registration.

13. The grounds for this distinction are, that in transfers of real property there can hardly be any motive for secrecy but a fraudulent one; that with but rare exceptions, such transfers must in various degrees affect the interests of others beyond the direct parties thereto, rendering the safeguard which registry would afford a matter of general importance; that so great a public benefit as the rendering possessions in real property secure, and valuable in proportion to their security, would of itself justify the interference of Government in the protection of transactions, even though its own interests were not directly affected thereby; that the claims of Government for revenue do, however, give it a positive and direct interest in the value and security of land, constituting it in effect a joint proprietor in the soil; and lastly, that the registry of such transfers would be but putting into force, under an improved system, an ancient usage in operation in Malabar, before our occupation of the country, and which our laws, not recognizing such usage, have in truth tended to destroy.

14. The registration of simple bonds has been prescribed, under certain risks in failure of registry, as the very execution of such deeds evinces some want of confidence between the parties thereto, as also an intention eventually of making an appeal to the laws for satisfaction; and such deeds of all others afford the most easy handle to fraud, and leave the victim, whether appearing as the executor of a fabricated document, or the holder of an unsettled bond, for which a receipt is produced, in each instance unprotected but by the frail chance of being able to prove a negative. The registration of such bonds has on the other hand been left, under strong inducements to effect it, strictly optional; as, where both parties have sufficient faith in each other's integrity, and where exposure, whether from motives of delicacy or from the nature of the transaction, is dreaded, the compulsion to appear and register could serve no good end, while it might lead to the most dangerous results.

(signed) *T. L. Strange,*
Assistant Judge of Malabar.

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From *M. D. Cockburn*, Esq. Judge at Calicut, to the Register to the Provincial Court, Western Division.

Sir,

With reference to your letter of the 20th ultimo, forwarding copy of a letter from the register to the Sudder Adawlut, under date the 14th of the same month, regarding frauds in the judicial department by means of stamped documents, and to report the nature and extent of the prevailing fraud, and to suggest the best means of checking them, I have the honour to inform you, that having caused a reference to be made to the records on the subjects, I find that no occurrence of the kind as ever happened in this court, and I am, therefore, unable to suggest any mode of checking the evil until I have an opportunity of learning the particular circumstances under which it may hereafter take place.

I have, &c.

(signed) *M. D. Cockburn*, Judge.

Calicut, 1 June 1837.

(True copies.)

(signed) *W. Douglas*, Register.

(No. 189.)

From *G. J. Beauchamp*, Esq. Register, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

I am directed by the judges of the Northern Provincial Court to submit the accompanying copies of the reports of the several zillah and assistant judges within this division, upon the nature and extent of frauds prevailing in the judicial departments by means of stamped documents, and of their suggestions for checking them, as required by your letter of the 14th April.

2. From these it will appear that the preparation of fictitious documents upon old stamps for the purpose of evading execution of the decrees of court, is considered to be the most prevalent species of fraud perpetrated by these means; for checking which the suggestions offered are chiefly confined to the indorsement by the vender upon the stamp of the date upon which the paper was sold, the name of the purchaser, with the purpose for which it may be required,—a system which it would appear has been attended with favourable results in Masulipatam, Rajahmundry, and Ganjam. It has been also proposed to place a limit upon the transfer of stamps, and the period for which they shall be considered current.

3. There can be no doubt that the practice of forging instruments on stamp paper is very prevalent, and the Provincial Court think that many people keep stamp paper by them to be made use of at a future day. It is difficult to suggest a remedy for this: the only one that suggests itself to the Provincial Court, is a law declaring that all stamps not used within a certain period after their issue shall be considered invalid. But the Provincial Court think that forged instruments are as frequently drawn out on unstamped paper as on that which is stamped, great facility for this species of fraud being afforded by their admission in courts of justice on payment of the prescribed penalty. The Provincial Court are of opinion that documents required to be executed on stamped paper should not be admissible in the courts on any terms whatever, if drawn out on unstamped paper. The entire exemption of acquittal, &c., to a certain extent, as now allowed, without any stamps, has contributed the most ready means, by the production of fraudulent discharges, of contending against, and often successfully evading just demands.

4. But the most effectual check to this kind of fraud, the Provincial Court think,

think, would be a law making the registry of transfers of real property, and generally all agreements relative to such property, obligatory. The judges have recommended this measure on a former occasion, and further experience convinces them of the expediency of it.

I have, &c.
(signed) *G. J. Beauchamp*, Register.

Masulipatam, Northern Provincial Court,
Register's Office, 6 June 1837.

Copy of the Return from the Acting Judge of Nellore to Precept No. 571.

The Acting Judge in the zillah of Nellore has the honour to acknowledge the receipt of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal, Northern Division, dated the 19th ultimo, and copy of circular order of Sudder Adawlut of the 14th ultimo, directing him to report the nature and the extent of the prevailing frauds, and to suggest the best means of checking them by means of stamped documents; and begs to suggest that on the sale of a stamp the vender shall be required to indorse on the back thereof the purpose for which it is required, as well as the date on which it is sold, and the name of the person requiring it. The Acting Judge is of opinion that this practice will greatly tend to check fraud.

The Acting Judge is of opinion that any enactment rendering it obligatory that all bonds and instruments shall be on stamp, will be impolitic, and tend to impede dealings throughout the community.

Given under my hand and the seal of the court this 2d day of May 1837.

(L. S.) (signed) *J. Goldingham*, Acting Judge.

Copy of the Return from the Acting Assistant Judge of Guntoor to Precept No. 570.

In return to the foregoing precept, forwarding an extract of proceedings of the same date, and a copy of a circular letter from the Sudder Adawlut, dated the 14th ultimo, requiring the zillah and assistant judges to report the nature and extent of the prevailing frauds in deeds executed on stamp papers, and to suggest the best means of checking them, I have the honour to state that there are great facilities for procuring old stamp papers, on which false bonds, receipts, &c. may be forged. This is more particularly the case at Masulipatam, where there are several persons who carry on a secret trade in old stamp papers. I have never heard of the stamps themselves or of the indorsements being forged; but in a case of forgery which occurred in this zillah about five years ago, the date of sale was fraudulently altered on a stamp paper, and since then the stamp venders in this district have been ordered to number all the stamp papers sold by them.

The indorsement of the stamp vender and the signature of the collector or his assistant are the principal and best checks against fraud. To render these more effectual I would respectfully beg to recommend that the practice which obtains in Ganjam, Rajahmundry, and Masulipatam, of indorsing on the stamp paper the purpose for which it is required, should be made universal. I would recommend that when a person sends his servant or agent to purchase a stamp on his account, the names of both should be written; that both the English and the corresponding native date, with the day of the week, should invariably be indorsed, and that the papers sold should be numbered. In order to discourage persons from keeping on their hands, and making a fraudulent use of stamp papers which they may have purchased and afterwards may not require, it would perhaps be advisable to allow them to return them into the collector's office, receiving back either the whole or a moiety of the purchase-money.

Whenever a collector or an assistant collector is removed from a district, I would recommend that all stamp papers bearing his signature should be returned

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by the venders in out stations to the collector's office, and that all stamps returned should be destroyed, an account thereof being sent to the stamp agent at Madras. A memorandum should also be furnished to the zillah or auxiliary court, showing the date on which each collector or assistant-collector entered and quitted the district.

Given under my hand and seal of the court at Guntoor, 3 May 1837.

(L. S.)

(signed) *E. Newbery,*
Acting Assistant Judge.

Copy of the Return from the Head Assistant Collector in charge of the Zillah Court of Rajahmundry to Precept No. 568.

(L. S.)

In returning the foregoing precept, No. 568, dated the 19th April 1837, the head assistant collector in charge of the court has the honour to state that the records of this court do not show the commission of any frauds in the judicial department by means of stamped documents. It is the duty of the sheristadar to examine all stamped papers received in court, and he is held responsible for their being correct. These papers are again examined by the native register, who enters the motions, &c. in the file-book, so that in the event of any fraud being attempted, it is immediately checked. It sometimes happens that vouchers and bonds are presented in court on unstamped paper, but there is reason to believe this informality arises more from ignorance of the regulations than from the desire to commit fraud, and in all such cases the practice is to levy ten times the value of stamp that ought to have been used, under the provisions of clause 1, section 3, Regulation II. of 1825.

The existing system, as stated above, of placing the examination of stamped documents under the superintendence of the sheristadar and native register, seems sufficient to check fraud, so long as these officers perform their duty with integrity, and the absence of fraud hitherto appears to strengthen this opinion.

Given under my hand and the seal of the court at Rajahmundry this 5th day of May, A. D. 1837.

(signed) *J. H. Bell,*
Head Assistant Collector in charge of the Court.

Copy of the Return from the Acting Judge of Chicacole to Precept No. 566.

The Acting Judge has the honour to acknowledge the receipt of the foregoing precept, calling upon him to report the nature and extent of frauds prevailing in the judicial department, by means of stamped documents, and to suggest the best means of checking them; and to state that he believes it to be a common occurrence for the parties to buy stamps and keep them by them for considerable periods, for the purpose of forging deeds of sale, or bonds and fictitious mortgages to evade the execution of decrees, and that he has been informed that old stamps may be purchased at a premium for the same purposes.

The Acting Judge has the honour further to state, that he considers that the only mode by which a check could be put on these proceedings would be for the collector to number all stamps received in his office during a year with consecutive numbers, each description of stamp being numbered from one upwards. All stamps should also be disposed of according to their numbers, and a register kept of the quantity and numbers of the stamps furnished to each of the stamp venders, who again should be compelled to dispose of the stamps in the order of the collector's number, but again numbering them consecutively with a station number, and writing a remark on the back of the paper, of the date of its sale and the person to whom it is sold. A further and still greater check upon frauds would be to declare, though it might perhaps require a special order of Government or an enactment, that stamp paper not used by the person to whom sold, or within a certain period after its purchase, should become invalid.

Given under my hand and the seal of the Zillah Court at Chicacole, this 13th day of May 1837.

(L. S.)

(signed) *A. Freese,* Acting Judge.

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Copy of the Return from the Acting Assistant Judge of Vizagapatam to Precept No. 567.

In return to this precept, the extract of proceedings accompanying which directed reports to be made of the opinions of the respective officers to whom it was addressed, regarding the amount, and nature, and means of checking the abuses to which the stamp papers are applied, the acting assistant judge begs to state that the retention of old stamps for the purposes of fraud or profit in retailing the same by the holders, is very prevalent. There can be no doubt but that a stamp could be purchased at a high premium for any year. At Rajahmundry district, where the collector insisted on the purpose for which stamps were sold being indorsed on them, a slight check existed; but from venders necessarily not being acquainted with the persons of all purchasers, it was not unfrequent for the names of the persons in whose name the documents were intended to be forged to be given. One particular instance now occurs to memory. Evana Soobbaroyoloo, the defendant in a special appeal case on the Rajahmundry file, where almost immediately on the decree being passed the enforcement order being issued, a receipt was filed and proved to be a forgery, for which this person is now under sentence. The book produced by the stamp vender showed the sale to the person in whose name the document was forged, also the purpose for which it was intended. The system, however, of having indorsed the purpose for and place at which every stamp is sold, and name of purchaser, is of use, as frequently it affords means of disproof to the opposite party, in obliging the party to show how he came by the stamp; and sellers of old stamps are not always willing to perjure themselves, or be at the trouble of attending the court. The system of forgery, however, is carried on to a much greater extent on unstamped papers. In fact, one-half the suits filed may on an average be said to contain, at least, one forged document before the decree is enforced. There appears no check to this system, but to insist on a registry of bonds, in presence of the parties, at the lowest possible rate of fee, to be calculated on the amount of the bond; the registers to be kept by the village curnums in duplicate, one copy of which should be sent monthly to the court, and there the heads of the several documents to be entered under the heads of the respective villages.

The search of the curnums' books deposited in court, to be allowed on payment of a fee, say two annas. In this there could be no hardship; it would not even be necessary to insist on stamp paper being used in registered bonds, or to collect penalties on registration. This system might be confined at first to those pergunnahs only in which the curnums have been regularly established; and, in fact, it is in these alone that forgeries are common. At all events this might be tried on all bonds above 10 rupees, and wherein real property was mortgaged. The court should, of course, have the option of allowing the several curnums to keep the registers, as in some cases it might not be safe to do so. This system would also add a degree of respectability to the office, which might in the opinion of the acting assistant judge be safely entrusted to this class.

In submitting this opinion, the acting assistant judge would have preferred availing himself of the opinion of other authorities, as he is well aware that the numerous reports will contain probably as numerous schemes. The great prevalence of the system of forgery, the extreme difficulty of conviction, and probabilities of escape from oversight in conducting the proceedings, render it absolutely necessary that some measures should be taken to put a stop to this system. In this district hardly any person seems to consider it the slightest disgrace to rest a defence on a forgery known to the whole of the community; and escapes from justice by those who are without doubt guilty, leads to the general belief that this course may at all times be adopted with impunity.

Given under my hand and the seal of the Court at Vizagapatam this 15th day of May 1837.

(L. S.)

(signed) *J. Rohde*,
Acting Assistant Judge.

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Copy of the Return from the Acting Assistant Judge of Masulipatam to Precept No. 667.

(L. S.)

* So in original.

In return to the foregoing precept, directing the assistant judge to submit without delay to * report the nature and extent of frauds prevailing in the judicial department by means of stamped documents, and to suggest the best means of checking them, the acting assistant judge has the honour to state that the former precept, dated 19th ultimo, No. 569, was received by the assistant judge, and was not brought to the notice of the acting assistant judge till this day. The acting assistant judge will make further return when he shall have given due consideration to the subject.

Given under my hand and the seal of the court this 24th day of May 1837.

(signed) *R. Davidson,*
Acting Assistant Judge.

Copy of Return to Precept No. 569.

(L. S.)

The acting assistant judge has the honour to acknowledge the receipt of the precept, dated 19th April 1837, requiring him to report the nature and extent of frauds prevailing in the judicial department by means of stamped documents, and to suggest the best means of checking them.

2. From the inquiries he has been enabled to make since his appointment to the auxiliary court, the acting assistant judge is led to believe that frauds of the nature above referred to do not prevail to any extent, and that the chief, if not the only fraudulent purpose, to which stamped papers are applied, is the fabrication of bonds.

3. The system which has prevailed during the last five months at this station seems calculated, to a certain degree, to check the evil complained of. On every occasion of selling stamp paper, the vender indorses on it the date of sale, the name of purchaser, and the use to which the latter purposes to apply it.

4. The acting assistant judge would suggest, with the view of rendering the check upon such fraudulent proceedings complete and permanent, that it be declared in future, that whenever any person may have purchased stamped paper and subsequently, not requiring it, may desire to dispose of it to another, the parties shall appear before some duly-constituted authority, that a statement to the effect shall be made on the paper, with an indorsement of the nature described in the preceding paragraph, on account of the second purchaser; that after the first purchase, the same paper shall be transferable twice only, and that any paper continuing in circulation for two years, and at the expiration of that period remaining unused, shall be considered null and void and rejected by any judicial tribunal to which it may be presented.

Given under my hand and the seal of the court this 1st day of June, A.D. 1837.

(signed) *R. Davidson,*
Acting Assistant Judge.

(True copies.)
(signed) *W. Douglas,* Register.

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From *H. A. Brett*, Esq. Register, Centre Provincial Court, Chittoor, to the Register of the Court of Sudder Adawlut, Fort St. George.

Chittoor Centre Provincial Court Register's Office,
Sir, 7 July 1837.

With reference to your letters, dated the 14th April last, and the 5th instant, I am directed by the Provincial Court in the Centre Division to transmit to you copies of returns from the several zillah judges, assistant judge, and principal sudder ameen to this Court's precept, under date the 18th April 1837, reporting the nature and extent of the prevailing frauds in their department, and suggesting the best means of checking them. I am also desired to state that the Court concur in opinion with the majority of the zillah judges, that the registering of deeds, to be made imperative in all cases, is the most likely means of preventing the frauds of most common occurrence, but they are doubtful of the practicability of such a measure, and would recommend that the district moonsiffs be authorized to register deeds under the provisions of Regulation XVII. of 1802, under the superintendence of the zillah judge, at such reduced fees as would be sufficient to cover the expense of an additional gomastah and stationery, and afford them a small remuneration for their trouble. They also think that the suggestion of the principal sudder ameen, that venders of stamps should be obliged to indorse upon the papers the object for which they are purchased, would have a salutary effect, and are of opinion that the sale and transfer of stamped paper by private individuals should be prohibited. The abuse adverted to by the zillah judge of Chingleput, which has arisen in the moonsiffs' courts, was brought to the notice of the higher court in a letter to the register to the Sudder Adawlut, dated the 29th April 1836, and which they then stated would, in their opinion, be best prevented by the appointment of responsible vakeels.

I have, &c.
(signed) *H. A. Brett*, Register.

To the Register to the Provincial Court of Appeal, Centre Division, Chittoor.

1. In returning the annexed precept, which accompanied an extract from the proceedings of the Provincial Court for the Centre Division, under date the 18th April last, forwarding a copy of the 1st paragraph of the letter from the register to the Court of Sudder Adawlut, dated the 14th of that month, questioning what is the nature of the frauds committed in the judicial department, to what extent do these frauds prevail, and what appears to be the best mode of checking them by means of stamp documents,—

2. The judge begs in reply to state, that attempts at fraud are very common, and of various kinds; forged bonds of every description are very frequently filed in court. Those on cadjans are the most difficult to detect; they are written with an iron pen and made to appear old by holding them in smoke, which has the effect of making the leaf brittle, and of a dark brown colour; age also makes the cadjan dry and of a similar colour both inside as well as out, but smoke colours the outside only. Bonds forged on country brown paper, such as mortgage deeds transferring property, are the most common. There are forgeries also on stamped paper, the paper having been purchased and kept for several years for that purpose. Evidence can be obtained to support these forgeries for a mere trifle. Instances have been known, where actions have been brought on forged bonds of this description, that the opposite party have acknowledged the validity of the forged deeds, pleaded payment, and then entered forged receipts, but the judge is of opinion that frauds very seldom succeed. The party cast push the case in appeal, and then if necessary into special, by which means the frauds are almost always detected. The crimes of perjury and subornation of perjury are very common, and when persons are brought forward for trial, they are very seldom convicted.

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3. The best method of checking these frauds, in the opinion of the zillah judge, would be by Act, enforcing an indorsement by the vender on the back of every stamp paper sold, showing the date when sold, the particular object for which the paper was purchased, and the purchaser's name, &c.

4. The judge is also of opinion that an officer ought to be appointed in every village to register, in the mode laid down in Regulation XVII. of 1802, all deeds executed, particularly all transfers of property, within three days after the execution of the same, or directing that all such deeds be executed at the village choultry in the presence of the head and curnum of the village; and lastly, that in all cases of supposed fraud, such as forgery or perjury, the officer before whom the offence is supposed to have been committed, be given authority to convene a jury under certain rules to try the case.

5. The zillah judge is of opinion that these acts would in a great measure put a stop to forgery, and would also in some degree prevent the daily crime of perjury.

6. Trial by jury in matters of forgery and perjury the zillah judge considers would very much relieve the criminal courts, by facilitating the tracing of facts; it would be the means of gradually introducing trial by jury, without which it appears useless to expect any radical improvement; it appears to be the best method of trial for the investigation of all such cases, and it would unquestionably deter many from committing these crimes. It is, in the opinion of the judge, the grand bulwark of his own liberties, and it would gratify him to see the same secured to every subject under the British Government.

Given under my hand and the seal of the court this 30th day of June, A. D. 1837.

(L. S.) (signed) *F. Lascelles,* Judge.

In return to the exigency of the precept of the Provincial Court of Appeal for the Centre Division, under date the 18th April 1837, forwarding an extract from the proceedings of the same date, calling upon the several judicial officers in the Centre Division to report the nature and extent of the prevailing frauds in their courts, and to suggest the best means of checking them, the zillah judge of Cuddapah has the honour to state that the forgery of bonds and receipts, and defacements of paper on which they are written to make it appear old, are the frauds of most frequent occurrence in this court; and the best check that can be devised, is to recognise only documents executed on water-marked stamps containing an indorsement of the stamp-vender of the specific purpose for which they were obtained; for example, Sold to for a bond to for rupees to be executed on such a day; and if a register were kept by every village moonsiff, in which all loans and contracts, &c. must be recorded, and all such registers forwarded weekly to the district moonsiffs, and by them, monthly, to be kept as a record in the court, the above frauds would be rendered almost impracticable. As these checks could not act retrospectively, all that could be done with regard to documents antecedent to the new regulation, would be to have them marked as existing at that date, leaving the question of their authenticity open; but such precaution would prevent new frauds.

Given under my hand and the seal of the court of Cuddapah this 17th June, A. D. 1837.

(signed) *A. E. Angelo,* Judge.

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To the Register to the Provincial Court of Appeal and Circuit for the Centre Division.

In return to the annexed precept, which accompanied an extract from the proceedings of the Provincial Court, under date the 18th ultimo, together with copy of paragraph 1 of a circular letter of the 14th of the same month, from the Register to the Court of Sudder Adawlut, requiring the principal sudder ameen to report upon the nature and extent of the prevailing frauds in the judicial department, by means of stamped documents, and to suggest the best means of checking them; the principal sudder ameen of Cumbum has the honour to state, that it has been the practice of this Court to admit, under Regulation XIII. of 1816, all documents written upon stamped papers, and under Regulation II. of 1825, those drawn out on common papers or cadjan leaves for sums below 64 rupees, and also those which may have been written on stamped papers of low price, and on unstamped papers for sums above 64 rupees, upon payment of the prescribed penalty. No fraud has ever been detected in this Court; but as documents are usually drawn out in this district upon stamped papers purchased by others, instead of by persons in whose name the documents are executed, the principal sudder ameen considers that some fraud might exist in this proceeding. He humbly begs to suggest that this fraud will of course be checked, if the stamp venders be required invariably to require the purchasers of stamped papers to state the nature and the object for which the stamp is required, and then to add the same to the usual indorsement on the back of the roll, whether it is intended for a bond, or a bill of sale, or a will, &c.; and if the Court be prohibited from admitting documents written upon stamped papers, unless they are sold in the name of the person bringing the documents into Court.

Any orders of the higher Court shall be duly attended to.

Given under my hand and the seal of the court at Cumbum, this 3d May 1837.

(signed) *Zekeooddeen Mahomed Khan,*
Principal Sudder Ameen.

(L. S.)

(L. S.)

In return to the within precept and extract from the proceedings of the Provincial Court for the Centre Division, dated 18th April 1837, transmitting extract from a letter from the Sudder Adawlut of the 14th of the same month, requiring the judge to report the nature and extent of the prevailing frauds in the judicial department, and to suggest the best means of checking them, by means of stamped documents, the judge has the honour to state, that on searching the records of this office, four cases of forgery have been discovered.

2. To obviate this evil, stamped documents should be used in dealing transactions, with the name of the purchaser and the name of the person for whom it was intended, as well as that of the person by whom the deed is to be given, and the date and place on which the purchase was made, indorsed on the back of the stamped instrument, and the person filing a forged document, whether on stamped paper or otherwise, should invariably be brought to trial for the said offence by the criminal court.

3. The judge suggests that the moonsiffs should be required to forward all cases in which forged documents should have been filed to the Court, to enable the judge to decide on the merits of the case, and to put the delinquents on their trial.

4. There exists a prevailing practice of purchasing stamps and transferring them to others, a practice which might be stopped by the enforcement of the afore-noticed suggestion in the 2d paragraph.

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Regulation II. of 1825 rather facilitates than checks forgery, and tends to operate to the injury of individuals.

Given under my hand and the seal of the court at Bellary this 15th day of June, A. D. 1837.

(signed) *H. Bushby*, Judge.

(L. S.)

According to the exigency of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal, Centre Division, under date the 18th April 1837, and extract from a letter from the Register to the Court of Sudder Adawlut, under date the 14th April 1837, directing the zillah judge to report the nature and extent of the prevailing frauds in the courts, and to suggest the best means of checking them, the zillah judge has the honour to state that frauds arise from various causes. 1st. From persons filing suits on false bonds, bills of sale, &c. 2dly. False receipts put in by the defendants when called upon to show cause why precept should not issue; but in the first of these instances the defendant has a chance of being able to disprove the plaintiff's claims, and in the second instance the plaintiff may be enabled to disprove the receipt. 3dly. On property being attached, claims preferred by a third party to this property, as being conditionally mortgaged or sold to him. In this instance the plaintiff has little or no chance of disproving the claim, the transaction having taken place entirely between the defendant and another person, and to which the plaintiff is no way privy; in almost every instance of a precept being issued these claims are brought forward. The account showing the property attached, and the certificate given by the villagers that the property is the defendant's, is no security, for in many instances these very men are produced as witnesses to prove it is the claimant's property. The use of stamp papers cannot possibly check these frauds; the stamp vender merely indorses on the back of the paper the date of its sale, and sometimes the name of the person to whom it is sold. In several instances that have occurred in this Court, the date of the deed is years posterior to the date on which the paper was sold. It is a very lucrative occupation to buy a quantity of stamp paper at different dates and to keep them, as the further back the date the higher is the premium paid for them. In the Tinnevelly district it was the custom for the stamp vender to indorse on the paper the date of sale, the person to whom sold, and the purpose for which it was purchased, for no one with honest intentions would buy a stamp paper unless he absolutely did require it. This plan, the zillah judge believes, was adopted originally by Mr. Monk, when judge of Tinnevelly. There seldom were any claims to property attached in the Tinnevelly district, and when such claims were brought forward, they were generally found correct. The zillah judge suggested to the collector of Chingleput the expediency of adopting the same plan in this zillah. It must be some few years before this system will have much effect in checking the false bonds, &c. The claims to property attached are certainly fewer now than they were when the zillah judge first joined this Court, but this is probably owing to the provision of Regulation I. of 1832. Latterly, however, bonds, &c. have been filed, purporting to have been executed in this zillah, and within a short distance of a stamp vender's station, yet the paper on which they were written had been sold at Madras. The longer the present system is adhered to in this zillah, the oftener will the papers bear the indorsement of the stamp vender at Madras; should, however, the plan be adopted in every zillah, and the indorsement of the stamp vender become to be considered as corroborative of the positive evidence adduced in support of the deed, or against the validity of the deed in the event of the indorsement showing the paper to have been sold to persons and for purposes different to those by whom and for which it is used, then the parties instituting suits on false bonds, &c. will resort to instruments written on unstamped paper or cadjan; at any rate these will be resorted to by persons setting up false claims to property attached, and by defendants who wish to prove that they have already paid the amount of the decree. The fine of 10 per cent. never can prevent this being done, for who would not pay 10 rupees to save himself from paying 500; and therefore, to make stamp papers a safeguard against fraud, the provisions of section 9, Regulation XIII. of 1816 ought to be again enacted.

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There is another subject which the zillah judge begs to bring to the notice of the higher courts, and which, although not coming within the scope of the present precept, the zillah judge trusts will not be thought irrelevant on his part in introducing in this return. The subject the zillah judge alludes to is the employment of persons as vakeels for parties in suits before the district moonsiffs. The parties who have suits in the district moonsiffs' courts are generally persons of the lower orders; they are totally ignorant of the commonest forms necessary for conducting a suit; their servants, relatives, and dependants are as ignorant as themselves; they therefore must resort to a set of men who are constantly about the district moonsiff's cutcherry, who, not being amenable to any authority, are guilty of the most barefaced frauds. When the zillah judge was assistant judge of Madura, a complaint was brought to him against the Stereevigoontur district moonsiff, and in examining into it the zillah judge discovered that suits had been filed in the district moonsiff's court by these men as vakeels for fictitious plaintiffs: on the notice being served by them on the defendants, they, the defendants, were informed, that on paying a certain sum the suit would be withdrawn. In examining into the complaints against the late Tripassore district moonsiff, Oudeshashier, the zillah judge, discovered that a particular set of men were in the constant habit of acting as vakeels in his court. The zillah judge, on his first taking charge of the court, issued orders to the district moonsiffs on this subject, and took every means to prevent this practice; those men then had the bonds transferred to them, and sued in their own names. A suit was filed a short time ago in this court by the actual proprietors of a bond against one of these vakeels, for the purpose of recovering from him the money which he had recovered and received on one of these fictitious transfer deeds. During the last month a man named Mootealoo Chitty presented a petition to the zillah judge, stating that he and his brother had been falsely sued by one Rungapa Chitty, in the Carungooly district moonsiff's court, in No. 21 of 1837, on a bond said to be transferred to Rungapah Chitty; that this man had many similar suits in the district moonsiff's court, and petitioner requested that his suit might be called up from the district moonsiff's file. The zillah judge sent an order to the district moonsiff to report on this petition. The district moonsiff, in his urzee, stated that Rungapah Chitty was plaintiff in Nos. 1–21, 31, 33, and 34, the bonds in these suits having been transferred to him; that he was vakeel for the plaintiff in No. 7, and vakeel for the defendant in No. 2. The zillah judge, on receiving this report, ordered the district moonsiff to send up the case, No. 21. The district moonsiff, in his answer to this order, stated that the plaintiff had withdrawn the suit before the judge's order was received. The zillah judge begs leave to submit, for the consideration of the judges of the Provincial Court of Appeal, and the judges of the Sudder Adawlut, whether it would not be better for the parties resorting to the district moonsiff's courts for the settlement of their causes, to have respectable and responsible vakeels appointed, than to be obliged, as they now really are, to avail themselves of the services of the men who now haunt the precincts of those courts.

Given under my hand and the seal of the court at Chingleput this 25th day of April, A. D. 1837.

(signed) *J. Horsley*, Judge.

(L. S.)

Para. 1. As required in this precept, the acting assistant judge has the honour to submit to the Provincial Court such remarks as occur to him regarding the frauds most prevalent in the court, and the means of preventing them.

2. By "fraud in judicial proceedings," he understands the establishment of falsehood and the procuring it to be acted upon as truth by the court."

2. * of effecting this there are two modes; first, the production of false witnesses; and second, the production of false documents.

* So in original.

The first of these the acting assistant judge regrets to say prevails to a fearful extent. It is his firm belief that in 90 out of 100 contested cases wilful and corrupt perjury is committed by some of the witnesses. It matters not how

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contradictory the assertions in the plaint may be with those in the answer; even when it is physically impossible that both can be true, yet no difficulty is ever experienced by the parties in proving, as far as evidence goes, their respective assertions; one side at least perjure themselves, but which, it is impossible, in most cases, to say.

The only check which human institutions can oppose to this crime is punishing it when detected; to its detection, however, so many obstacles exist, that there is little hope by that means of rendering the trade of perjury not worth carrying on. At present the danger bears so small a proportion to the advantages to be obtained, as to be below calculation, and it is to be feared, that until such time as the natives of this country are brought to think that perjury is morally degrading and sinful, no amelioration of the present state of things can be looked for.

With regard to the second mode of fraud, the production of false documents, it is, perhaps, less used than the first. There is more danger of detection, and more of failing of their end. The natives are well aware of the maxim, "*Litera scripta manet*," and are averse to commit themselves in any way which precludes the subsequent exercise of their invention.

The acting assistant judge does not see how stamps, as employed at present, can be of any use in checking this practice. Stamps combine the advantage of bringing revenue to the state, and of restraining frivolous litigation by the imposition of a tax, but can never be evidence of the authenticity of a document. A forgery may be executed on stamps, and a genuine writing on an unstamped paper. There is but one way in which stamps can be a check, and that is, by having the dies changed annually, or by weaving the date of the year into the paper. This is now done by the Stamp-office, but all the benefit which might be derived from it is rendered nugatory by the sale of paper bearing date 1836 in 1837. If arrangements can be made for selling in each year only paper bearing that date (which could very easily be done), it would be a great check on one kind of fraud, and render it difficult for a man to fabricate a bond purporting to be executed years before.

It appears worthy of consideration, whether a register of documents might not be established in every village in charge of a curnum, of which each page when blank should be sealed, numbered, and certified with the initials of the judge, or duly authorized person, in which all individuals at present holding documents of any kind should be directed to come in and have them entered within a certain period (say six months), after which time no unregistered document should be received in any court of law. A register once established, it would be easy to keep it up by making it incumbent on the people to register all new documents in it. Such a system, if brought to work well, would effectually prevent much of the fraud practised in documents, and would strike a blow at the oral perjury trade, as the demand for false witnesses to prove forged documents would of course decrease.

Given under my hand and the seal of the court at Cuddalore this 26th day of April, in the year of our Lord 1837.

(signed) *_____

Acting Assistant Judge.

* So in original.

From *G. S. Hooper*, Esq. Acting Third Judge, for Register at Trichinopoly, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

With reference to your letters of the 14th April last and 5th ultimo, I am directed by the Provincial Court for the Southern Division to transmit to you copies of the reports received from the zillah and assistant judges in the division, describing the nature and extent of the prevailing frauds in the judicial department, by means of stamped documents, and suggesting the best means of cheking them.

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2. In accordance with the request contained in the second paragraph of your letter of the 14th April last, that the Provincial Court would record their own opinion on the subject, I am also directed to submit copy of a minute forwarded to them by the second judge of the court, now absent on leave, and at the same time to state that they concur so entirely in the sentiments therein expressed, and in the expediency of the measures therein proposed, that they have nothing further to add, except that in the event of the measure recommended in the 10th paragraph thereof being adopted, they would suggest that the holders of all deeds written on unstamped materials, for sums exceeding five rupees, which may be now in existence, or which may be executed before the measure comes into operation, should be required to produce them for registry within a certain fixed period, in failure of which they should be declared inadmissible in the courts unless the most satisfactory proof can be shown that the omission was unavoidable; otherwise it is to be feared that the frauds now so prevalent will be but partially suppressed, as artful rogues will strive to impose upon the courts by fabricating documents on unstamped materials, bearing dates prior to that from which such documents shall be declared inadmissible.

(signed) *G. H. Hooper*,
Acting Third Judge, for Register.

Trichinopoly Register's Office,
5 August 1837.

Minute of the Second Judge.

1. The second judge of the court having perused the circular letter from the Sudder Adawlut, under date 14th April last, directing that the court wouldc all upon the several zillah and assistant judges in the Division to report the nature and extent of the frauds at present existing in the judicial department, and to suggest the best mode of checking them by means of stamped documents, resolves, notwithstanding that he is not sitting on the bench, to commit to paper the ideas which occur to him on the subject, and which he would place on record if he were present in court. This paper he will forward to the judges of the court, with whom it will rest to record it or not as they may please.

2. That frauds connected with documents produced before the courts are increasing rapidly, is a lamentable fact, which I think must have occurred to every public officer who has experience in the working of those establishments. This increase I attribute most entirely to the operation of clause 1, section 3, and of section 4, Regulation II. of 1825, by the former of which, in opposition to section 11, Regulation XIII. of 1816, documents not written on materials bearing a stamp are, on the payment of a penalty, rendered admissible in evidence in the several courts; and by the latter, the salutary rule laid down in the same section, that every document relating to money, exceeding in value rupees 16, should be executed on materials bearing a stamp, is modified.

3. There can be no doubt but that in modifying the law which at the time existed, the Government were actuated by a desire to relieve the people from a grievance which was supposed to weigh oppressively upon them. So far, however, as my experience enables me to form a judgment on the subject, I would say that the necessity for using stamps on all occasions of the execution of documents connected with money transactions, can never act as an oppression on the fair and honest man, but must, on the contrary, operate as the surest safeguard that can be raised to defend him against the frauds of the unprincipled sharpers by whom he is surrounded.

4. As it occurs to me, the only argument that can be adduced in favour of documents for an amount between 16 and 64 rupees not being required to be written on materials bearing a stamp is, that the people ought not to be fettered or exposed to unnecessary expense in such petty transactions. I would, however, think that, considering how great the security acquired by the fair dealer by the use of stamps unquestionably is, he ought not to be allowed to forego an advantage so cheaply purchased, even though he should be so blind to his own interest as to demur at the moderate outlay required for securing it.

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5. The natives of the country are fully aware of the advantage which the use of stamps gives them in all money transactions; but, unwilling to incur a trifling present expense in order to secure a future benefit, which they hope to receive without any cost at all, or desirous to relieve their debtors from the expense of purchasing stamps on which to write their bonds, they neglect to avail themselves of it. In such a case they should be treated as children; protection being afforded them against their own acts as much as against the frauds of others.

6. We will suppose an honest but imprudent man lending 1,000 rupees to a plausible artful rogue, who, while making every profession of honesty, secretly determines by all means in his power to cheat him.

7. The debtor succeeds in persuading the thoughtless creditor to excuse him from going to the expense of a stamp, and to permit him to execute a bond on unstamped material, and after a time denies the transaction altogether and refuses payment; the honest creditor is then forced into court, in which, as a preliminary to the admission of his bond, he has to pay ten times the cost of the stamp (20 rupees) on which his bond ought to have been written, and which would, in all probability, have been originally borne by the opposite party. Considering the disadvantage under which he acts in presenting his claim upon a document which its very nature must expose to suspicion, and in contending against all the false evidence which his artful adversary may bring against him, it must be confessed that the simple man fights his adversary with fearful odds against him, and that the chances are much in favour of his being ultimately the loser, a misfortune against which he might have been secured had it been compulsory on him to receive his bond on a stamp,—a security which would have been cheaply bought (even though a most improbable supposition) had he been obliged to incur the expense of the stamp himself.

8. By the courts being required to admit documents not written on stamp, on the payment of a penalty, those establishments have been inundated with fabricated deeds of every description; the labour of the judges in investigating these unstamped documents has been manifoldly increased, while the difficulty of discriminating between such of the documents as are genuine and those that are spurious, has been greatly augmented.

9. In the zillah of Combaconum scarcely an instance occurs of a decree of court being carried into execution without its being opposed by the production of deeds on unstamped material. It is not saying too much to declare that nine out of ten of these documents are false; but in order to establish this, the most minute and frequently laborious investigation is necessary, much valuable time of the zillah judge and of the Provincial Court (for the matter is usually appealed to this court) is wasted, and, what is of infinitely greater importance, the court, it is to be feared, notwithstanding all the precaution that they may take against so unhappy a consequence, are frequently deceived, and thus unwillingly become instruments of injustice, so artfully are these documents concocted, and so systematically are the witnesses trained to prove them.

10. As the means of checking these frauds, I would recommend that the courts should be again restricted from admitting any documents unless written upon materials bearing a stamp; and further, that all deeds for an amount exceeding 5 rupees, should be required to be written on stamps, the price of those from 5 rupees to 20 rupees being one anna, and of those from 20 rupees to 64 rupees, two annas.

11. I believe the practice, noticed by the zillah judge of Salem, of parties purchasing quantities of stamps in order, at some future time, to use them in the fabrication of deeds, or to sell them at enhanced prices to those who may meditate the commission of such frauds, to prevail to a considerable extent in some places.

12. In order to put a stop to it, all of the stamp venders in the country should be required to adopt the practice established in Tanjore, of indorsing with their signature every stamp that may be sold by them, with the date on which it may be sold, the name of the person who may purchase it, and the purpose for which he may at the time declare that he bought it.

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13. As a still more powerful preventive to fraud, I would suggest that offices of record should be formed in every zillah, in which it should be required that that every deed executed for a sum exceeding 5 rupees should be registered.

14. I would recommend that it should be enacted that every deed should, on its being executed, be produced before the curnum of the village, who should be required to enter the names of the parties to the deed, its date, and a short description of its nature, and of the amount for which it might have been granted, in a book to be kept by him for that purpose. That he should then attest the deed with his signature, and indorse it with the date on which it might have been registered, and be entitled to receive a fee of two annas for his trouble.

15. That an extract from this book should, at the end of each month, be forwarded, under the signature of the curnum, to the tahsildar of the talook, to be by him transmitted to the moonsiff of the district; by whom again it should be forwarded to the zillah court, in which it shall be copied by a servant employed expressly for the duty, into a book kept for the purpose, the pages of the book being numbered, and each page signed by the zillah judge or register.

16. I would suggest that it should be required that every document produced before a court should bear the attestation of the curnum, and that after a particular time, to be determined upon, the courts should be restricted from admitting documents not bearing such attestation of registry.

17. It may be said that this system would be too inquisitorial in its operation; I, however, cannot but think that the great benefit that it would confer on the community, and the advantage that it would afford the courts in deciding upon claims founded upon documents, would more than counterbalance any individual inconvenience that might be experienced in adopting it.

(signed) *H. Dickenson,*
Second Judge.

Kotagherry, 20 June 1837.

From *E. P. Thomson*, Esq. Acting Judge of Madura, to the Register to the Provincial Court of Appeal, Southern Division, Trichinopoly.

Sir,

1. I HAVE the honour to acknowledge the receipt of your letter of the 19th April, together with a communication from the register to the Sudder Adawlut, regarding the best mode of checking frauds now practised by means of stamped paper.

2. The Government, in order to guard against frauds of this kind, ordered that the purchaser's name should be indorsed on the back of the paper. This rule, in some districts, is not observed, and in others it is so carelessly executed, that it is a premium to imposition instead of a protection against it. The following seem to be some of the inconveniences of the present system.

1stly. A person applies to the vender for paper, which is sold, but no inquiry is made, and it is impossible to trace afterwards either the paper or the purchaser.

2dly. Persons buy paper in fictitious names, on which they forge bonds, receipts, counter documents, &c. &c.

3dly. Old paper is hoarded up and sold for very large sums and it is well, known that there is now a considerable quantity of it in the country. I may here remark that a few months ago I had occasion to examine the accounts of a party rather suddenly, and found amongst them seven blank stamped cadjans for the years 1821-2-3-5, and 6, and a skeleton bond with the witnesses' names; the dates and the writer's name already written, and the body of the bond empty, which would have been duly filled up when a proper victim was found. The stamped cadjans of course were kept for similar fraudulent uses.

4thly. If a person has an old piece of paper of four annas' value, and he wishes to execute a bond of an old date, which ought to be written on one

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rupee paper, he cuts out the stamp of the old paper, and ingeniously inserts in its stead a stamp bearing the impression of one rupee.

3. The best means of checking the present abuses appear to me to be—

1st. That each paper be numbered, and the corresponding number entered in a book and signed by the collector.

2dly. The following particulars to be indorsed on every paper sold :—

Purchaser's name and profession.
Father's name.
Village name.
The use to which the paper is to be applied.
Date of sale.
Place of sale.

The above to be entered in the book, and signed by the collector or European assistants as often as possible.

3dly. At the end of every month a list of all sales to be made as public as possible.

4thly. Every purchaser to be allowed to exchange the paper he may have purchased for other; or having no use for the same, to receive the value of it back on application to the collector. This will prevent the necessity of his selling it to others at a depreciated price, or hoarding it up, as is the present practice.

5thly. Stamped cadjans to be discontinued. A forgery written on them is much more difficult to find out than one written on paper. They afford no convenience or advantage to the natives, except to those who wish to cheat.

6thly. Stamps to be on Goa or Portuguese paper, and not on country paper; the mode of preparing the latter renders it most susceptible of decay, particularly in a damp climate, such as Malabar and Canara, and insects attack it with great avidity; I have seen a valuable document on country paper perfectly destroyed in a few days by insects and damp; whereas no time or climate has any effect on Goa paper. I beg to refer to the records in the Court of Canara. Goa paper is extremely cheap.

7thly. All paper to have a water-mark, in which the year in which it is issued is shown, and the supply to be regulated as nearly as possible, so that, if possible, the paper of the preceding year be not sold in the current one.

8thly. The dies to bear the year in which the paper is issued, and their form and size to be frequently changed, to make their imitation more difficult.

And 9thly. Holders of old papers to be required to return the same within a certain time on receiving the value of the same, or else to be subject to such punishment as may be deemed proper.

4. These are the particulars that suggest themselves to me as being best adapted to check the evils that are now carried on by means of stamped paper. But the greatest number of frauds now practised are for sums below 64 rupees, for which stamped paper is not required; and the class of people on whom these impositions most frequently fall are less able to bear them than their richer neighbours can the more extensive ones. It therefore seems most desirable to protect the poor man, whose petty dealings seldom amount to 64 rupees, but are of great moment to him, as well as the rich in their larger speculations. I would therefore recommend that the use of stamp be made obligatory on every occasion except for very small sums. Even for sums above 64 rupees the use of stamped paper is not insisted upon; and people will, if the difficulty of obtaining stamped paper for improper purposes becomes so great as to make detection certain, adopt the plan which they frequently do at present, of using plain paper and cadjans, and pay the penalty on the same. The evil of false bonds will therefore still exist.

5. From the character of the people, however, I do not expect that any real advantage will be gained until the Government order the indiscriminate registry of

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of every bond and document. I am perfectly aware that there are objections against such a measure, and at the same time I know that many able men, well acquainted with Indian affairs, strongly advocate it. A well-established plan for registering bonds, documents, transfer of property, would decrease litigation in a very extraordinary degree, and would confer the greatest blessing on the body of the people, who now fall an easy prey to their more wily and designing neighbours.

6. The fact of a skeleton bond, as I mentioned above, having been found in the house of a rich merchant, shows in some measure the system that is carried on; but this is only a fraction of the deep-laid villany that is in practice throughout the country. Not a day passes without the most atrocious schemes coming to light, and many others of course pass without detection. No persons however careful, and however much on his guard, can be safe. Witnesses are to be procured at all times, and at all prices, who are ready to depose to the whole transaction, and the man's ruin is sealed without a possibility of escape.

7. I will not enter further on a subject which, although of the greatest importance, is not immediately the one under reply, but will merely add, that if the transfer of personal or real property was better secured than it is at present, its value would be considerably increased. No person now dares to purchase a piece of land or a house, not knowing but that it has been mortgaged two or three times. If the intended purchaser, on application at the registry office, could ascertain what claims were on it, he would be able to act accordingly. In Germany, one of the most civilized countries in the world, this is the case; in the several towns, registries of all sales and purchases of lands are kept, and any applicant wishing to see them may do so on paying a small fee, and he knows immediately whether he can safely conclude his bargain or not.

Madura Zillah Court,
24 June 1837.

I have, &c.
(signed) *E. P. Thomson*,
Acting Judge.

From *T. Prendergast*, Esq. Assistant Judge of Tinnevelly Auxiliary Court, to the Register to the Provincial Court, Southern Division.

Sir,

I HAVE the honour to acknowledge the receipt of your letters of the 19th April and 10th July last, and with reference to the frauds committed in this zillah by means of stamped documents, to observe that none have hitherto come under my personal observation. The records of the Auxiliary Court, however, show, that in 1834 an individual was sentenced on the criminal side to six months' imprisonment and a fine of 200 rupees for having purchased stamp papers in other people's names; and that on the civil side, the plaintiff in O. S., No. 53 of 1831, committed a similar offence, having purchased a paper in defendant's name, and forged thereupon a bond for 1,000 rupees in his own favour; and again in O. S, No. 35 of 1833, a forged bond was filed by the plaintiff, whose suit was dismissed with all costs, and a fine of 50 rupees. These are the only instances in which stamped documents have been judicially declared to be forgeries by the Auxiliary Court. It must not be supposed, however, that such forgeries are uncommon, because they are rarely brought to light. It is notorious that a great number of stamped papers have been abstracted during the last few years by the persons appointed to sell them, and that they have been widely circulated through the country. The holders of such papers have no occasion to appear in any court of justice to attain their objects. They exact sums of money to a large amount from the individuals whom they select as their victims, under threats of suing them for a much larger amount; and this is the species of extortion that is most frequently resorted to with stamp papers, being the most free from risk to the parties who practise it. Preventive measures against the system alluded to will naturally come under the consideration of the collector; but as the evil cannot be effectually controlled by the utmost vigilance over those to whose charge the stamp papers are committed for sale, I would suggest that all such persons should be declared liable to the pains

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pains and penalties of forgery, whenever that crime shall appear to have been committed by means of a stamp paper feloniously carried away by them, or fraudulently disposed of by them.

2. The purchasing of stamp papers under fictitious names is a crime which has extensively prevailed in this district. The practice of entering only the date of sale on the back of each paper gave unlimited facilities to those who were disposed to forge documents. The indorsements now made show a great improvement; but whereas it is impossible for a stamp vender to know whether every man gives his true name or not when he comes to purchase a paper, when it appears advisable that the indorsements should invariably contain the names and fathers' names of each party to the contemplated contract, as well as a brief description thereof, I would also recommend that the curnums of each village should be employed as notaries, and that no contract drawn upon stamp paper should be binding unless written by them; that they should report to the tahsildars at stated periods the particulars of all such contracts; that they should be responsible for the identity of the parties giving or executing the contracts; that small fees should be allowed them for performing this duty, and that they should be liable to a fine in every case in which they may neglect to attend to the application of contracting parties, unless they show good cause for non-compliance.

I have, &c.
(signed) *T. Prendergast,*
Assistant Judge.

Tinnevelly Auxiliary Court,
17 July 1837.

From *F. M. Lewin*, Esq. Judge of Combaconum, to the Register to the Provincial Court, Southern Division.

Sir,

I HAVE the honour to state, in reply to your letter of the 19th instant, for the information of superior authorities, that frauds prevail to a great extent in this zillah in the way of false documents on unstamped cadjans, and also on stamped ones, but not to any great extent on stamped paper documents; and the reason of this is, I believe, because the people are not allowed to buy a quantity of stamps and hoard them, and because the name of the buyer, and the object for which the stamp is bought, and the date, is all written on the back of the paper, and signed by the stamp darogah.

2. The practice of these obviously useful precautions ought to be enforced in every zillah as they are here, and used to be in the Salem zillah.

3. Another reason here why great frauds cannot be carried on easily, is, because the stamp darogahs are such respectable people.

4. This is a point to which too much attention cannot be paid, for if the stamp-seller is careless or indifferent, the tricks will begin immediately in any zillah.

5. With respect to cadjans the case is more difficult, because unstamped documents are admitted in courts of justice, and they dry them, and smoke them, and imitate them, to give them the appearance of antiquity, and disguise them so much that it is difficult to detect a forgery from a real document.

6. Stamped cadjans ought to bear the same precautions upon them as stamped paper, and no documents should be held to be valid at all, except such as are on stamps; for in such a zillah as this there is no villany concerted in the way of forgery which will not find persons ready to write it and witness it.

7. But the best way to stop forgery and frauds in documents is to make the crime punishable by the criminal courts with two years' imprisonment and 30 stripes with a ratan, instead of making it an offence of such magnitude as that the circuit judge only is to try it, for which there is no occasion whatever, as the offence is not considered in the eyes of the people as a serious one, any more than perjury is; and our taking its cognizance out of the hands of the criminal

criminal courts, and referring it to the courts of circuit, increases the difficulties of conviction so much as to deter both the criminal judge and the police officers, except in very clear cases, from sending up forgeries to be tried at all.

8. These latter remarks apply equally to perjury, and forgery is so intimately connected with perjury, that if the one is legislated for, the other had better be so at the same time.

9. If a document is a forgery, then the writer of it and the witnesses to it have perjured themselves in any civil action, most probably, which has been founded upon it.

10. These remarks are all that occur to me on this subject; and I think, with well-paid and respectable stamp darogahs, and the precautions described, and with prompt efficient trial and punishment by the criminal courts, both of forgery and perjury, these serious evils in the community may be very much diminished.

I have, &c.

Combaconum, 24 April 1837. (signed) *F. M. Lewin*, Judge.

From *E. Bannerman*, Esq. Judge of Salem Zillah Court, to the Register to the Southern Provincial Court of Appeal, Trichinopoly.

Sir,

I HAVE the honour to acknowledge the receipt of your communication, dated 19th instant, respecting the means of checking frauds in the judicial department by means of stamped papers.

At present when a native intends such fraud he generally attempts it without using stamped paper, which would cramp his arrangements, as the stamp vender's notice of the sale and of the object of the stamped paper, confines the person to a particular date, and one more recent than generally suits with an intended fraud. It is indeed said that many natives have laid by old stamp paper for the purpose of such frauds; but I do not think that the natives are so long-sighted in their measures as such a system would imply.

Altogether, it seems to me that, so long as the courts recognize agreements, &c. on unstamped paper, the only effect of making stamps instrumental to the detection of frauds would be that of causing those who intend such frauds to have nothing to do with stamped paper, and, therefore, that nothing short of absolute rejection of all agreements not on stamped paper would effect the particular check which is contemplated.

I cannot venture to recommend such absolute rejection of all unstamped agreements, &c., as the measure involves a multitude of conflicting considerations, in which I do not feel competent to judge; but if the absolute rejection were determined on, it would, I think, be easy to establish secret marks and a secret clue to those marks, so that those who attempted such frauds would be sometimes subject to the risk of a discrepancy of dates and consequent detection; but they would soon learn to date the fraudulent document after they bought it from the stamp vender, by which, though the necessity of doing this would cramp their arrangements, they would be safe from the risk of discrepancy in dates.

There is another mode in which the object in view might, perhaps, be more effectually attained.

Whether the courts refuse to recognize unstamped agreements or not, let the stamp venders (more generally dispersed than now) be authorized attestators of the agreements for which stamped papers are sought, so that the parties may buy the stamp, pass the agreement, and have it respectably attested at the same time. I would not recommend that all this be compulsory on the parties, but I would recommend that the resort to such means of attestation be encouraged by refunds of half stamp duty on such attestations, and by making agreements so attested a sufficient ground for summary process of recovery; much

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much certitude might thus be given to agreements, and much of such litigation as now arises from the hope of delay, and the facility of denying agreements, would be cut off.

The above is already done on the attestation of district moonsiffs, who are already mere attestators in regard to many claims which are preferred before them, merely for the purpose of obtaining the concerted acknowledgment of the debtor and a moonsiff's decree in such cases, and the terms of attestation in the cases I now contemplate might be almost the same. The only difference is, that to establish many attestators, except at an extravagant cost, recourse must be had to persons of rather inferior station to that of the district moonsiffs; but on the other hand, though the benefit of attestators cannot be extended to all places, this scarcely seems a reason for not extending it to many.

Some economy might be attained by uniting in one person the pensioner, the attestator, and the stamp vender.

Salem Zillah Court, 27 April 1837. (signed) *E. Bannerman*, Judge.

From *W. A. Forsyth*, Esq. Acting Assistant Judge of Coimbatore Auxiliary Court, to the Register to the Provincial Court of Appeal for the Southern Division, Trichinopoly.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 19th April, calling for suggestions as to the best means of checking frauds in the judicial department by means of stamped documents, and directing me to report on the nature and extent of the prevailing frauds.

2. The following are the frauds of most frequent occurrence in this district, and on the western coast, which have all either come under my own observation, or been reported to me by the lower courts.

I. On property being attached in satisfaction of a decree, the owner frequently fabricates a deed showing the previous sale or mortgage of the property, makes his bargain with the nominal purchaser or mortgagee to prosecute the claim, and thereby evades the process of the Court. Such claims are of course often put in previous to a decree being passed in suits in which fraud is contemplated; but as the utmost ambition of the individuals concerned in the conspiracy is generally confined to retaining possession of the property adjudged to the successful party as long as practicable, the action is seldom brought till after a final decree is promulgated. This fraud is practised to a very great extent, and years frequently elapse before a decree is fully executed, to the utter ruin of the party in whose favour it was passed. It is true that, if the claim is proved to be fictitious, the claimant is liable to punishment under the provisions of section 2, Regulation I. of 1832; but it is a notorious fact, that more than half of these fictitious suits, after remaining months and frequently years on the file, are withdrawn the moment the Court is prepared to take evidence in support of the plaint; and even when the penalty is enforced, the amount of the fine seldom exceeds the profit derived by the parties implicated in the fraud.

3. With a view of checking this description of fraud, the stamp darogahs in the provinces were directed to indorse on each stamp, in addition to the date of sale, the name of the purchaser, and the specific object for which it is bought. This precaution has doubtless lessened the profits of the venders of old stamp paper; but as long as the stamp is transferable, and until measures are adopted to ascertain that the person who applies for the paper is employed by the individual in whose name it is purchased, the trade must flourish; in fact, the great check it has received is rather to be attributed to the admission of deeds executed on unstamped paper in courts of judicature, than to the beneficial result of any order that has hitherto emanated from the Stamp-office, inasmuch as it is as easy to suborn evidence to the execution of a bond on unstamped as on stamped paper, and the penalty leviable under clause 2, section 3, Regulation II. of 1825, is less than the suborner would have had to pay, had he applied to those who hoard up blank stamped instruments for the purpose

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purpose of facilitating frauds. Mr. Sullivan, when principal collector of Coimbatore, submitted for consideration whether it would not be expedient to fix a time within which it should be obligatory on the purchaser of the stamp to apply it to the purpose for which it was sold; and I feel convinced that the frauds which such an enactment would prevent would more than counterbalance any objections that can be brought against it, for persons of wealth have always servants to send to the Stamp-office, and a poor man is not likely to purchase his stamp till he actually requires it, and is well aware of the suspicion that would be attached to a deed not executed within a reasonable period after the stamp was sold to him.

II. On application being made for execution of a decree for a specific sum of money, the party adjudged to pay it very frequently forges a receipt in the name of the person in whose favour it is passed, for the whole or part of the amount decreed.

4. This fraud is even of more frequent occurrence than the one previously noticed, and the success with which it is practised calls for the most serious attention. This is partly to be attributed to the length of time which generally elapses before application for execution is made; partly to the dishonesty of the petitioners, who, having passed no written acknowledgment for what has been paid to them, claim more than they are entitled to, and thereby induce debtors to retaliate and forge a receipt for a sum exceeding the amount actually liquidated; but chiefly to the cupidity and want of integrity of the vakeels and their dependants. The only effectual way of checking this fraud appears to me to limit the period within which application for execution of decree should be made, to such time as the interest on the amount adjudged is equivalent to the principal, and to declare all payments in satisfaction of a decree null and void, unless paid or acknowledged in writing in the court in which judgment was given, or unless both parties appear at an office for the sale of stamps, where their names, the sum for which the receipt is required, and the number of the decree, should be indorsed on the stamp, as well as entered in the register.

III. Parties who have dealings for sums exceeding 64 rupees, constantly execute two deeds on unstamped paper, and when the execution is admitted, or the cause disposed of *exparte*, evade the penalty leviable under clause 1, section 3, Regulation II. of 1825, by alleging that they have lost the documents.

5. This fraud was brought to the notice of the judges in my letter of the 5th January last, and was commented upon by the Sudder Adawlut in their proceedings of the 10th February 1837. It is quite impossible to submit a satisfactory report on all the petty frauds practised unless I was allowed some months to do so; it was, however, my intention, had I not been called upon to submit my reply without further delay, to endeavour to show that the penalty on deeds executed on unstamped paper, leviable under clause 1, section 3, Regulation II. of 1825, is so little felt that it has had scarcely any effect in checking frauds, and that the provisions of section 4 of that Regulation, by which instruments for sums not exceeding 64 rupees are not required to be written on stamped paper, have tended to demoralize and not to benefit the lower classes of the native community.

Coimbatore Auxiliary Court,
18 July 1837.

(signed) *W. A. Forsyth,*
Acting Assistant Judge.

Note by the Secretary in the General Department.

India:
Sep. Cons.
20 Oct. 1837.
No. 32.

The existing Stamp Regulations having been revised by the Law Commission in concert with the Board of Customs, who have the management of that branch of the public revenue, the draft of Act prepared for the purpose of placing the inhabitants of Calcutta on a footing of equality with those of the interior, in respect to the levy of these duties, has been transferred from the Legislative to this department for consideration in detail.

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I have nothing particular to offer upon the rules prepared by the Law Commission, except to observe that as the draft runs at present, it will introduce our Bengal stamp law into the eastern settlements, and the possessions of the Tenasserim coast, where hitherto they had used no stamps. I do know how far this may be intended.

The other points I have to notice refer principally to verbal corrections or modifications of clauses which are best considered when the Council shall revise the Act *quasi* in committee.

The principal reason, however, I conclude for referring this draft to the General and Financial Department has been, that the rates of duty in the schedules, and the documents subjected to duty, might be brought under revision. The tables of the Bengal Schedule were framed from those of England and Ireland, and were first made law in the detail they now present by Regulation XVI. of 1824. It was then thought fair and proper to introduce the same impost into the town of Calcutta, and a draft for the purpose was submitted to the home authorities for approval, as required by sections 25, 98 and 99 of the Act 53 Geo. 3. This Act, with a Schedule corresponding exactly with that of the Mofussil Regulation of 1824, was returned from England, and published as Regulation XII. 1826; but the Supreme Court, after a long argument, refused to recognize its provisions for want of registry. The same regulation was accordingly made, with the necessary alteration of dates and words, passed again by government on the 4th of June following, and being laid before the Supreme Court, was registered on the 12th July 1827. In the present draft of Act this Regulation is referred to as Regulation XII. 1826; but I imagine it will be necessary to add some words to identify the law intended to be repealed with that admitted to registry in the Supreme Court in 1827, for the former was not recognized. The point I observe was brought to the notice of the Law Commission, and they admitted the expediency of the addition, which will accordingly have to be made. This, however, is incidental; it is the rates of duty and the documents taxed that I am to consider.

When the Calcutta Regulation took effect, and came to be acted upon, it was soon found that some of the rates of the Schedule bore injuriously upon trade. The government, therefore, by proclamation, gave notice of some remissions; as first, in respect to receipts for less than 50 rupees; and, secondly, in respect to bills of exchange not negotiated. These remissions and other defects of the Schedule that had become apparent in the working of the law, were corrected shortly after for the Mofussil, being incorporated in a new consolidated regulation prepared in this department, and published as Regulation X. 1829, which regulation has been unaltered since.

It is the principal object of the present draft of Act to extend to Calcutta the rule which heretofore the government has only been able to enact for its own courts; viz., that which deprives of legal validity, as evidence in a court of justice, deeds, &c., not executed on the proper stamp. The government, before the late Act 3 & 4 Will. 4, had thought it possessed no power of prescribing to His Majesty's courts that they should not receive documentary evidence, unless the paper showed the prescribed tax to be paid. The Charter Act sets this point at rest, and the draft is well framed to effect the intention; but there is something to be said as to the rates before passing the rules into law, modified and improved as they are by the revision of the Law Commission.

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The duties of the Bengal Schedule bear towards those of England the following proportions:

BILLS OF EXCHANGE, PROMISSORY NOTES, &c.

England.				Bengal.		
	Less than Two Months, or at 60 Days' Sight.	Exceeding Two Months.		Less than Three Months.	Above Three Months.
£. s.	s. d.	s. d.		R.	R. A.	R. A.
Above 2 – but under 5 5	1 –	1 6	Not exceeding - -	25	– 1	– 2
„ 5 5 „ 20 –	1 6	2 –	Above 25 to	50	– 2	– 4
„ 20 – „ 30 –	2 –	2 6	„ 50 „	100	– 4	– 8
„ 30 – „ 50 –	2 6	3 6	„ 100 „	200	– 8	– 12
„ 50 – „ 100 –	3 6	4 6	„ 200 „	400	– 12	1 –
„ 100 – „ 200 –	4 6	5 –	„ 400 „	800	1 –	1 8
„ 200 – „ 300 –	5 –	6 –	„ 800 „	1,600	1 8	2 –
„ 300 – „ 500 –	6 –	8 6	„ 1,600 „	3,000	2 –	2 8
„ 500 – „ 1,000 –	8 6	12 6	„ 3,000 „	5,000	2 8	4 –
„ 1,000 – „ 2,000 –	12 6	15 –	„ 5,000 „	10,000	4 –	6 –
„ 2,000 – „ 3,000 –	15 –	25 –	„ 10,000 „	20,000	6 –	8 –
„ 3,000 – - - -	25 –	30 –	„ 20,000 „	30,000	8 –	12 –
			„ 30,000 „	50,000	12 –	16 –
			„ 50,000 „	100,000	16 –	20 –
			„ 100,000 - -		20 –	25 –

FOREIGN BILLS OF EXCHANGE.			
	£.	s. d.	
Not above - - - -	100 -	1 6	Foreign bills, by the proposed Bengal Schedule, are taxed as promissory notes of less than three months' sight; that is, bills drawn in Bengal, and payable out. Foreign bills drawn from without are exempted, unless negotiated after acceptance.
Above 100 to -	200 -	3 –	
„ 200 „ -	500 -	4 –	
„ 500 „ -	1,000 -	5 –	
„ 1,000 „ -	2,000 -	7 6	
„ 2,000 „ -	3,000 -	10 6	
„ 3,000 - -	-	15 –	

RECEIPTS.

England.			Bengal.		
£.	£.	s. d.	R.	R.	R. A.
Above 5 to	10 -	– 3	Above 50 to	100 -	– 2
„ 10 „	20 -	– 6	„ 100 „	200 -	– 4
„ 20 „	50 -	1 –	„ 200 „	500 -	– 8
„ 50 „	100 -	1 6	„ 500 „	1,000 -	– 12
„ 100 „	200 -	2 6	„ 1,000 „	2,000 -	1 –
„ 200 „	300 -	4 –	„ 2,000 „	3,000 -	1 8
„ 300 „	500 -	5 –	„ 3,000 „	5,000 -	2 –
„ 500 „	1,000 -	7 6	„ 5,000 „	8,000 -	2 8
„ 1,000 - -	-	10 –	„ 8,000 „	- -	4 –
And 10s. for receipt in full.					

Receipts, with assurance against re-demand for a time, are to pay as promissory notes for equal time; but this head the Law Commission recommend to be omitted, and, I think, for good reason.

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BONDS AND MORTGAGES.

England.		Bengal.	
	£. s.		R. A.
Under - - -	50 - 1 -	Under - - -	25 - - 2
„ 50 to	100 - 1 10	„ 25 to	50 - - 4
„ 100 „	200 - 2 -	„ 50 „	100 - - 8
„ 200 „	300 - 3 -	„ 100 „	200 - 1 -
„ 300 „	500 - 4 -	„ 200 „	300 - 3 -
„ 500 „	1,000 - 5 -	„ 300 „	500 - 4 -
„ 1,000 „	2,000 - 6 -	„ 500 „	1,000 - 6 -
„ 2,000 „	3,000 - 7 -	„ 1,000 „	2,000 - 10 -
„ 3,000 „	4,000 - 8 -	„ 2,000 „	3,000 - 16 -
„ 4,000 „	5,000 - 9 -	„ 3,000 „	5,000 - 20 -
„ 5,000 „	10,000 - 12 -	„ 5,000 „	10,000 - 32 -
„ 10,000 „	15,000 - 15 -	„ 10,000 „	20,000 - 40 -
„ 15,000 „	20,000 - 20 -	„ 20,000 „	50,000 - 64 -
„ 20,000 „ - - -	25 -	„ 50,000 „	75,000 - 70 -
And 25*s.* progressive.		„ 75,000 „	100,000 - 80 -
		„ 100,000 „	200,000 - 120 -
		Above 200,000 „ - -	150 -
		And 100 rupees for each further lakh.	

From the above comparison of some of the principal heads of the schedule it will be apparent, that although upon bonds our rates are much lower, being about half the English rate, the taxation upon what may be called commercial paper, viz., bills of exchange, receipts, &c., is very nearly as heavy.

When the duties of this schedule were first laid on the community of Calcutta, several of the houses determined to use stamps; amongst them Messrs. Palmer & Co.: and I have been assured, that in one year the contributions of that firm to the stamp revenue exceeded 20,000 rupees, the whole of which was a tax on the profits, or rather upon the difficulties of the firm. The Bank of Bengal continued long to use stamps for the acknowledgments it took for deposits and other loans, and required promissory notes and bills brought for discount to be on stamp paper, accompanied with the requisite stamp copies, which was a heavy tax on the commercial community. The deeds and documents, however, not being void when executed on unstamped paper, the established firms of Calcutta fell off one after the other from the practice of using stamps in commercial transactions; and the Union Bank having early determined not to use or require them, the Bank of Bengal was compelled, in 1833, to consent to discount notes and bills drawn upon unstamped paper, and to take engagements for its loans on deposit, &c., also on plain paper, lest it should lose, by the competition of the Union Bank, all its best business. Since then it is only formal deeds that have been executed on stamps in Calcutta; commercial dealings have universally been carried on without, except that since the government has made advances for remittance on bills on London, the bills have of necessity been drawn and the policies of insurance have been executed on stamps for the purpose of sale to government.

It may be readily conjectured how very heavily the tax on instruments which pass from hand to hand in discounts, &c. must bear on commerce, and particularly on a commerce carried on, like that of Calcutta, with borrowed capital. The notes or obligations by which money is raised for every operation being renewed, say every three months, and the same working capital being again taxed when drawn for in bills of exchange from the interior, the state cannot be estimated to take annually less than near one per cent. on the capital employed, and this constitutes a very large per-centage indeed on the annual profits of a firm. It must be evident, that unless the duty can be generally enforced, it must bear most unequally, and with greatest severity, on the most honest, and had better therefore not be laid on at all, for no firm that did its business with stamps could bear to compete with another that used none. Bills of exchange have nominally been subjected to stamp duty in the interior since 1810–11, but the instances are extremely rare of any documents of this description being ever executed upon a stamped material. If a person the most fastidious

tidious were to ask a mahajan of Benares for a hoondee on Calcutta, the mahajan would say, I cannot draw one, but can indorse over a Gwalior bill on Calcutta that has come to me for negotiation; and in this way he would evade and has evaded the stamp tax; and whether it be owing to the good faith of the native merchants, or to the condition of our courts, the fact is very singular, that scarcely an instance is known of a hoondee being made the subject of a civil action in those courts, so that the want of a stamp should be pleaded in bar of process on the document. If the European houses, therefore, were to use stamps for their bills of exchange, there is no reason to expect that the practice in respect to hoondees would change, and under the difficulties which attend this part of the law, I am inclined to recommend that bills of exchange and cheques drawn to order be entirely omitted from the Bengal Schedule. Promissory notes and acknowledgments for money received cannot be similarly treated, because there is no drawing distinctions between ikrars and tumussooks, and both are fair objects of taxation, and have long been so in the interior. The duty is levied on the borrowing and lending of money as a consideration for the additional security the lender obtains in a written document, enforcible through the courts of justice. Although promissory notes, therefore, are as much a commercial paper as bills of exchange and cheques payable to order, I am not for omitting them from the schedule; nor do I see any good reason for lowering the rate of duty laid on them.

The transactions in promissory notes being local, the duty may be generally enforced through the condition of validity to the deed for recovery in a court of law, as imposed by the draft of Act; banks may compound as heretofore for stamps on the promissory notes payable on demand which they may issue. These will not need to be stamped when notice is given of the composition, and could not conveniently be so. The government, while the enforcement of the tax was in some degree doubtful, admitted the banks of Calcutta to compound for their bank notes on very easy terms; but hereafter more may be demanded both of the Union and Bengal Bank. A bank's credit could not stand for an instant under a doubt whether the paper it issued was valid for recovery in a court of law. These institutions, therefore, are at the mercy of government.

Sea risk and other similar insurances are taxed in Bengal on the same principle as in England, but the policies have never hitherto been executed on stamps in Calcutta, except when the government is in some way a party.

The rates are as follows:—

ENGLAND, As per Act 3 & 4 Will. 4, c. 23.	Duty.	BENGAL, As per Draft.	——
	s. *d.*		R. A.
When the revenue is above 15 *s.* per 100 *l.*, and the amount 100 *l.* - -	1 3	When the premium is two per cent. for not more than an assured amount of rupees 1,000 - - - -	– 8
Exceeding 100 *l.*; for each additional 100 *l.* - - - - - - -	1 –	For each addition of rupees 1,000 -	– 8
When the premium is from 15 *s.* to 30 *s.* per 100 *l.* - - - -	2 6	Premium above two per cent. per 1,000 - - - -	1 –
Premium above 30 *s.* per cent. per 100 *l.* - - - - - -	5 –	And for each 1,000 additional -	1 –
And when by periods, 2 *s.* 6 *d.* per 100 *l.*, assured for three months; 5 *s.* for above three months.			

The distinction thus is, that in Bengal we have only two grades, and no rule for time insurances; our lowest grade, two per cent., is above the highest limit of the English scale, which is 30 *s.* per cent.; so that the question arises, whether to make a lower grade for policies at one per cent. and to introduce the time rule of the English Act.

There are an immense number of things taxed by stamp in England, which are not so here, as newspapers, advertisements, appraisements, probates, &c. &c.

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Such taxes there can be no present necessity to introduce; but amongst the papers transferred from the Legislative Department is a list of English deeds, prepared by a native of the Stamp-office, Ramchunder Ghosal, and intended to show those in use in Calcutta, which are not subjected to stamp duty by the schedule. It may be right when the draft of Act is considered by Council in committee to run over this list, in order to determine whether by any general head, or by special entry, they shall be included. Most of them are included by name in the English Stamp Act. The committee have framed the present schedule from Regulation X. 1829, which is the Mofussil enactment, and deeds not in use in the interior, and the names of which were untranslateable, were advisedly excluded therefrom for the sake of simplicity. We are now, however, to have the same law generally for all the presidency; and deeds not otherwise specified, which in English law means obligations, or acts of all kinds executed under seal, may as well, as it seems to me, be included by name, and made liable to an eight or four rupees tax, which is not heavy for writings relating to matters of sufficient consequence to be executed under seal.

I do not find that the Law Commission have furnished a revised draft of Schedule (B.), exhibiting the rates of duty on law proceedings. This draft of Act, however, and the notices in Schedule (A.), as at present worded, seem as if intended to bring the Supreme Court, in common with all other courts of justice, under the provisions of the law. So with the court of requests and Calcutta police magistrates.

It is true, that on examining the heads of Schedule (B.) there are no stamps indicated for courts of requests, or for Her Majesty's courts. The several stamps imposed are referred to the rates for petitions or for pleadings, or for exhibits, or for decrees in the several courts, as specified; and the Supreme Court, the recorder's court of the eastern settlements, and the courts of requests, were not named under any of these heads, which is a virtual exemption. But the terms petitions to magistrates will include those presented to the Calcutta magistrates; and in the case of the Supreme Court, I cannot see why bail bonds, recognizances, and such instruments should be exempted altogether, even though the pleadings, &c. be so. If, therefore, they be not taxed in Schedule (B.), they might be included in Schedule (A.); whereas they are at present included in the general exemption of the head in Schedule (A.), and reference is made to Schedule (B.), which contains no provision for them. If it be intended at any future time to lay any stamps on the law proceedings of the Supreme Court, they should be established in lieu of the fees now levied for government; and for the correct levy of which hereafter there will no adequate security except through stamps. The change might be made the occasion of a considerable reduction, which would remove much of the odium.

We have, be it observed, in the law paper schedule of the English Act, the materials for framing a similar one for Her Majesty's courts here, without much trouble, whenever this should be determined upon.

I would not, however, be understood to recommend this addition to the Stamp Act at present, but I think the change will be found necessary and convenient hereafter, if the fees are to be levied, as proposed, for government; and if it be determined to leave out the Supreme Court, the exemption might be made specific, with the reason assigned, viz., that separate fees are levied for government through the officers of the court, instead of the question being got rid of by an omission in the schedule. This would explain to the public what otherwise appears to be an irregularity of taxation.

Suppose it is intended to bring the police magistrates of Calcutta under the same rules in regard to stamps as other magistrates; if not, the exemption should also be specifically declared.

If also stamps are to be introduced into the eastern settlements, some previous arrangements will be necessary for providing the materials and establishing places of vend. These difficulties will, perhaps, be best got over by providing that the law in all new places shall take effect a certain time after proclamation by the government of Bengal or Governor-general in Council in the executive department. The point may be discussed when the draft of Act is considered, as I presume it must be, in a committee of the Council.

(signed) *H. T. Prinsep,* Secretary.

Notes by the Hon. *A. Ross*, Esq. on Revised Draft of Stamp Act.

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On Stamps.

India:
Sep. Cons.
20 Oct. 1837.
No. 33.

Sec. II. Under this section the provisions of the Act will have operation in the Straits settlements, the Tenasserim provinces, Arracan, Assam, and all newly-acquired territories subject to the Presidency of Fort William. I am of opinion that in the present impoverished condition of those territories, the provisions of the Act should not be extended to them.

Sec. IV. This section enacts that no instrument or writing, for which a stamp duty shall be payable under section II., shall be received as creating, transferring, or extinguishing any right or obligation, or as evidence in any civil proceeding in any court of justice, or shall be registered in any public office, or authenticated by any public officer, unless such instrument or writing, either be upon a stamp as prescribed by the Governor-general of India in Council, and of a value not less than that indicated in the Schedule (A.), *or be accompanied with a copy thereof upon a stamp so prescribed, and of ten times the value so indicated.*

The concluding words of the section, which I have underlined, by enabling the holder of an unstamped instrument to render it as valid for every purpose as if it had been written on paper bearing the proper stamp, are calculated to render the enactment in a great measure inoperative. If the words marked be retained, the great majority of instruments intended to serve as evidence of the nature and conditions of agreements, which, if not committed to writing, would be liable to be disputed, will be written on unstamped paper. No other risk will thereby be incurred than that of having to pay ten times the value of the prescribed stamp, in the very improbable event of the agreements so evidenced being disputed; and that risk will be so small, that few will be disposed to take the trouble to secure themselves against it.

I would observe, moreover, that a stamp duty on such instruments, in addition to the tax on their exhibition as evidence in a court of justice, as indicated in Schedule (B.), will discourage the practice of preparing written evidence of transactions of small value, and will thus, without yielding much revenue, cause an augmentation of the business of the courts, by increasing both the number of disputes, and the difficulty of deciding them.

On these considerations I would omit the words of this section which I have underlined, and would exempt from duty all instruments or writing of the description referred to which relate to a less value than 100 rupees.

Bills of exchange or hoondees, promissory notes issued by bankers and by persons engaged in trade and commerce, and all the other instruments specified in Schedule (A.), which without bearing the attestation of witnesses pass from hand to hand in commercial transactions, should, I think, be exempted from stamp duty. Little or no revenue will ever be realized from a duty on such instruments under a law which merely declares them to be invalid unless written on a prescribed stamp. Their validity will always be estimated by the credit of the individuals or establishments responsible for the value they represent, and will be very little if at all affected by the circumstance of their not being written on a stamp, as no merchants or banking establishments will ever be induced by that circumstance to injure their credit by refusing to pay a demand, which, by the known usage of their business, they are bound to satisfy.

These instruments are required to be written on stamp paper by Regulation X. 1829; but yet, in regard to them, that Regulation has been a dead letter from the date of its enactment. Scarcely an instance is known of a hoondee having been made the subject of a civil action in our courts*.

* *See* Mr. Prinsep's note on the draft under consideration.

Moreover, as Mr. Prinsep observes, a tax on instruments which pass from hand to hand in commercial business bears very heavily on a commerce carried on, like that of Calcutta, with borrowed capital; and unless the law can be generally enforced, it must bear with peculiar severity upon those who think it dishonest to evade it.

Promissory notes and other instruments executed by or in favour of persons not engaged in business, which did not pass from hand to hand in commercial transactions, and which relate to a value of considerable amount, may be subjected

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jected to a stamp duty, that is, a duty imposed on such instruments may be realized, because they would not serve the purpose for which they are executed if the law requiring them to be written on a stamp were evaded.

Sec. VIII. This section continues the stamp duties on law papers and on judicial proceedings. I have already, on more than one occasion, recorded my opinion against such duties, and I repeat that I think them objectionable, as being calculated to prevent the due administration of justice, and consequently to retard the improvement of the country, by discouraging the outlay of capital and the exertions of industry.

14 September 1837. (signed) *A. Ross.*

India: Sep. Cons. 20 Oct. 1837. No. 34. Revised Draft of Stamp Act.

MINUTE by the Honourable *H. Shakespear*, Esq.

Clause II. INSTEAD of excluding any part of the territories subject to the Presidency of Fort William from the operation of the Act, I should prefer enacting a clause giving the Governor-general of India in Council the power to exclude such parts as he might deem fit.

IV. The admission of unstamped instruments, when accompanied by a copy or a stamp of ten times the value of the prescribed stamp, is no doubt open to the objections stated by Mr. Ross; but I do not see how they can be got over, or in what manner they would be obviated by giving up the fine altogether, and excepting instruments below 100 rupees from stamp duty.

I concur, however, with Mr. Ross in excepting bills of exchange, hoondees, &c. from the duty. The reasons assigned by Mr. Ross and Mr. Prinsep for this exception are to my mind conclusive.

My opinions in regard to judicial stamps are, I am sorry to say, directly opposed to Mr. Ross's, and if there is any intention on the part of the Governor-general in Council to relinquish them, I shall beg to place the grounds of them on record, if they are not already recorded. Not considering such relinquishment to be in contemplation, I shall content myself with suggesting that Schedule (B.) be referred, before it is finally adopted, for the opinion of the Sudder Court, as it is not improbable that the late changes in the relative powers of the native judges may make alterations in the Schedule desirable.

In consideration of the fees and costs which suitors in those courts have to pay, I am disposed to concur with Mr. Prinsep, that the Supreme Court, the Court of Requests, and the magistracy of Calcutta, should be specifically exempted from the tax on judicial papers.

(signed) *H. Shakespear.*

17 September 1837.

India: Sep. Cons. 20 Oct. 1837. No. 35.

Stamp Act.

MINUTE by the Governor-General.

THE details of this law were first discussed before my arrival in India; they have since been made matter of reference to the Law Commission, and to the Board of Customs, &c.; and I do not feel myself to be so far master of them as to be able, with confidence, to give an opinion upon them, as being well or ill fitted to the local interests and habits of Calcutta or the provinces, but I can have no objection to record my opinion upon the questions which have been adverted to by Mr. Ross and Mr. Shakespear.

1st. I should be sorry to see a Stamp Act introduced into provinces so rude or so ill peopled as are Assam and Arracan and Tenasserim; and for the Eastern Settlements I would reserve the question for consideration upon the report of Mr. Young; I would, therefore, at least except these provinces from the operation of the Act, and I think that it would be better to do so expressly than to give to the Governor-general in Council a dispensing power, which is, in principle, always an objectionable privilege.

2d. A penalty of a stamp of ten times the value of that which would have been originally required, has been found, in England, sufficient to ensure a pretty general resort to stamped instruments, and might do so here, though this may be doubtful in a country where, notwithstanding a national character of bad faith in dealing, there is, particularly in native commercial transactions, much of personal confidence.

confidence. Yet I know of no better method of enforcing the adoption of stamped instruments, and it would be found occasionally to lead to the infliction of hardships too grievous to be borne, if instruments unstamped were absolutely and without remedy excluded from the courts. No. 7. On Stamps.

3d. I have no doubt, upon the reasons laid down by Mr. Prinsep, that hoondees, and other circulating paper of that description, should be exempted from stamps; and

4th. With regard to judicial stamps, my opinions are much nearer to those of Mr. Ross than to the directly opposite opinions of Mr. Shakespear. These stamps appear to me to be wrong, as everything must be wrong which impedes the operation of the law, and makes the redress of injury and the attainment of right costly and difficult; but whether amidst the many objectionable taxes which yet exist, in various parts of the empire, bearing upon the prosperity and well-being of the people, this is the most objectionable of all, and should first be repealed, may well be doubted. I would not aggravate the evil by making the tax heavier than it is at present, but I do not think that we are yet in a condition to remove it. I can have no objection to the reference which Mr. Shakespear proposes to make to the Sudder Court.

5 October 1837. (signed) *Auckland.*

Ordered, that a copy of the Draft Act and of Schedule (B.) be transferred to the Judicial Department, in order that the Sudder Dewanny Adawlut may be consulted in respect to its provisions before the draft is transferred to the Legislative Department. P. S. Order in India: Sep. Cons. 20 Oct. 1837.

(No. 4.)

Extract from the proceedings of the Honourable the President of the Council of India in Council, in the Judicial Department, under date the 19th March 1838. Unrecorded.

(No. 303.)

To *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Sir,

In compliance with the requisition conveyed by your letter (No. 183), dated the 20th November last, and its enclosure, I am directed by the Honourable the Deputy-governor of Bengal to transmit, for the information of the President in Council, the accompanying copy of a letter (No. 94), from the Register of the Sudder Dewanny Adawlut, dated the 12th ultimo, containing the Court's opinion on the Stamp Act proposed for enactment. Judicial Department.

Fort William, 6 February 1838.

I have, &c.
(signed) *F. J. Halliday,*
Officiating Secretary to the Government of Bengal.

(No. 94.)

To *F. J. Halliday*, Esq. Officiating Secretary to the Government, in the Judicial Department.

Sir,

I am directed by the Court to acknowledge the receipt of your letter (No. 2302), dated the 25th November last, forwarding a draft of a Stamp Act proposed for enactment, and, in reply, to submit the following observations for the consideration of his Honor the Deputy-governor. Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, Esqrs. Judges: W. Money, Esq. Temporary Judge, J. R. Hutchinson and C. Harding, Esqrs. Officiating Judges.

2. The Court presume that, under the provisions of sections 4 and 24, taken in connexion with each other, it is intended that when a deed, for which a stamp is prescribed, has been written upon plain paper, or upon paper bearing a stamp of inferior value to that indicated, the copy required to legalize the document for reception in a court of justice, shall be engrossed upon a stamp of ten times the value of that prescribed, and that the full value of the stamp required for the copy shall

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shall be paid to the Government; but that, in the latter case, credit shall be given to the holder of the deed for the price he has already paid for the stamp of inferior value. Thus if a deed, for which a stamp of 10 rupees is prescribed, be written upon plain paper, the penalty would be 100 rupees; in the event, however, of its being written upon paper of six rupees' value, the penalty would be 94 rupees, or ten times the value of the stamp prescribed, less the amount already paid. The Court are aware of no reason why the penalty should not be fixed in both instances upon the same principle, and in the same ratio to the amount of the original loss to Government, by making it in the one case ten times the value of the stamp indicated in the Schedule to be proper for the document, and in the other ten times the difference between the value of the stamp so indicated and that actually used. Should the Court's reading of the above law be correct, they observe that its practical application might be attended with great injustice. For instance, in the event of a deed, for which a stamp of 100 rupees' value is required, being written upon a stamp of 80 rupees, in order to legalize the document, it would be necessary for the holder to have a copy engrossed upon a stamp of 1,000 rupees, for which he would be required to pay that sum, less 80 rupees, or 920 rupees, although the original loss to Government was only 20 rupees. In such instance the penalty would be out of all proportion to the omission, whether wilful or otherwise, and the Court accordingly beg to recommend that the fine should, in all instances, be in the ratio of ten times the amount of the loss sustained by the Government at the time of the execution of the deed.

3. The Court beg to suggest that in the 18th section, the words "or other duly authorized person," be introduced after the word, "district," in the fifth line. The sentence would then run as follows: "Or to permit the collector of the stamp revenue of the district, or other duly authorized person," &c.

4. The Court observe that by section 29, the offences described in section 25 are to be dealt with by the Supreme Court as misdemeanors. The Company's courts, however, at present treat such offences as felonies, that is, as crimes punishable by ignominious exposure and imprisonment, with labour in irons for seven years. They suggest that after the words "hard labour," in the 25th section, the words "in irons" be inserted; and that, to avoid the possibility of any misapprehension hereafter, a clause be introduced into the Act, declaratory of the repeal of such parts of clause 3, section 4, Regulation II. 1807, and clauses 1 and 2, section 10, Regulation XVII. 1817, as relate to stamped papers.

5. The Court beg to suggest that the latter part of the exemption to the 1st heading of Schedule (B.) should run as follows: "Also mookulkas and recognizances taken from prosecutors, defendants and witnesses, to secure attendance at criminal trials."

6. With reference to the rule appended to the 3d heading of Schedule (B.), the Court think it advisable it should be generally provided that stamped papers shall be written on one side only.

7. The Court beg to recommend, that after the words "regular suits," in the second line of the 5th heading of the schedule, the following be inserted: "Any application for a special appeal, or for a review of judgment."

8. They observe that no express provision is made under the heading 7 of the above schedule, for the stamps to be used for petitions presented to the collector of the stamp revenue. They are aware that the existing law is worded in the same manner, but they would suggest that the terms of the 1st clause, comprising the designations of public functionaries, should be altered by the omission of the word "land" when speaking of the collector.

9. The Court propose to add the following to the 2d clause of exemptions, under heading 7, relating to matters connected with their treatment in gaol, or in case of criminal prisoners with the case* in which they are confined.

* So in original.

10. With reference to the note in the 9th heading of the schedule, the Court observe, that no doubt can exist in regard to the mode of calculating the institution fee on suits for entire estates paying revenue to Government, or for specific portions legally separated, and rated in the collector's books at a distinct and defined jumma; but it is not so clear that the rule directly applies to fractional portions of an undivided estate. They have noticed that, under the corresponding rule of Schedule (B.) Regulation X. 1829, which is expressed in the same terms, there has been a considerable

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considerable difference of opinion in the construction of the law, and a consequent absence of uniformity in practice. To obviate future doubts, they would suggest that a sentence be added to the 1st clause of the note, to the effect that, in suits for fractional portions of undivided estates paying revenue to Government, the value shall be assumed at three times the amount of the proportional jumma which the fractional portion may bear with reference to the jumma of the whole estate.

11. The Court instruct me to state, that they have frequently had occasion to observe the hardship of requiring persons suing for any interest in malgoozaree lands, not capable of valuation under the first rule of the note, to estimate its value at the selling price. They suggest that in cases where the portion of malgoozaree land sued for bears a jumma capable of specification, the suit should be laid, as at present, at three times the amount of the annual jumma; but in cases in which the jumma cannot be specified, the institution fee should be calculated at the rate of the estimated mesne profits for two years.

12. In conclusion, I am directed to observe, for the consideration of his Honor, that no alteration has been made in the existing law with regard to pleadings (Head No. 11, Schedule (B.), filed in the courts of the principal sudder ameens, who are empowered by Act XXV. of 1837 to try suits of unlimited amount.

Fort William, 12 January 1838. I am, &c.

(signed) *J. Hawkins*,
Officiating Register.

Judicial Department, the —— 1838. (True copy.)

(signed) *F. J. Halliday*, Officiating Secretary to the Government of Bengal.

(No. 457.)

To *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Judicial Department, Fort William.

Judicial Department.

Sir,

With reference to your letter (No. 124), dated the 20th November last, I am directed by the Right honourable the Governor-general to transmit to you, for the purpose of being submitted to the Honourable the President in Council, the annexed copy of a letter from the Register of the Sudder Dewanny Adawlut for the N. W. Provinces, with its enclosures, relative to the proposed Stamp Act, modifying Regulations XII. of 1826, and X. of 1829.

Camp, Kurnaul, 3 March 1838. I have, &c.

(signed) *J. Thomason*,
Officiating Secretary to the Governor-general, N. W. P.

(No. 181.)

S. D. A. N. W. P. Present: M. H. Turnbull, A. J. Colvin, W. Lambert, W. Monckton, and B. Taylor, Esqrs. Judges.

To *J. Thomason*, Esq. Officiating Secretary to the Right honourable the Governor-general, Judicial Department, North Western Provinces.

Sir,

I am directed to acknowledge the receipt of your letter (No. 1219) under date the 13th December last, forwarding for the consideration and opinion of the Court the draft of a proposed Stamp Act, modifying Regulations XII. of 1826, and X. of 1829.

2. In reply, I am desired to state, that no objections occur to the Court, as regards the provisions of the Act itself; a few alterations have suggested themselves in the schedule annexed to it, which the Court direct me to notice as follows.

Art. 2.

3. The whole of the provincial courts of appeal, as well as the courts of the registers, having been abolished in both the Western and Lower Provinces, the mention of those courts in this article would appear unnecessary. The Court observe that, under the provisions of the 1st section of the proposed Act, copies of decrees passed by either of the tribunals in question, will continue to be written on the same stamp paper as heretofore.

Art. 2 continued. 4. It will be necessary, however, the Court observe, to provide in this article for the stamp paper to be used for copies of decrees passed by the sudder ameens; the only law at present applicable to copies of such decisions, is that contained in article 2, Schedule (B.), Regulation X. of 1829, which it is proposed to repeal, and the corresponding article of the enactment under consideration makes no provision on the point.

Art. 3. 5. With reference to this article, the Court observe, that under the orders of Government, communicated in Mr. Secretary Macnaghten's letter to the address of the Register to the Calcutta Court of Sudder Dewanny Adawlut, dated the 2d December 1834, the substance of which was circulated for the information and guidance of the subordinate judicial authorities on the 2d January 1835, it was ruled, that "Copies of deeds and other exhibits and papers, not being proceedings, accounts, statements, or the like, provided for by article 3, Schedule (B.), Regulation X. of 1829, when made for record in the courts in lieu of originals returned to the parties, should be written on plain paper;" and in the event of its being determined to continue any exception of this nature, the Court would suggest, that a distinct rule be laid down in the article in question for the guidance of the courts, clearly defining the description of papers to be exempted from the operation of it.

Art. 5. 6. The rule contained in this article has been declared applicable to exhibits filed with applications for a review of judgment under section 4, Regulation XXVI. of 1814; it might, however, the Court observe, be advisable to include a provision to that effect in the article itself, as well as to define what is to be considered as constituting a single exhibit, particularly as regards putwaries' papers, account-books kept by merchants, shopkeepers and others, and such like, which are not unfrequently contained in several volumes, and extend over a long series of years.

Art. 10. 7. It has been ruled by the Court, with the sanction of Government, communicated in Mr. Secretary Macsween's letter to the address of the Register to the Calcutta Court of Sudder Dewanny Adawlut, No. 1790, dated the 29th September 1834, that in appeals from decisions passed in cases originally instituted on stamp paper of one-fourth the prescribed value, under the provisions of section 8, Regulation VIII. of 1831, the full amount of stamp should be levied, the provisions of the section in question applying only to the original suit. The Court beg to suggest that a note to that effect be added to the article under consideration. I am desired to state that the construction above quoted was circulated for the information and guidance of the zillah and city judges on the 12th December 1834.

Art. 11. 8. With reference to the enlarged powers recently conferred on the principal sudder ameens, under the provisions of section 1, Act XXV. of 1837, some modification of this article, as regards those officers, would appear necessary in respect to cases made over to them in which the amount or value of the property sued for may exceed 1,000 rupees. Copies of a correspondence on the subject, which has lately taken place between this Court and the Court of Sudder Dewanny Adawlut at Calcutta, and the Judge of Benares, with whom the matter originated, are herewith submitted for the consideration of the Right honourable the Governor-general.

Art. 11 continued. 9. The Court further observe, that under clause 3, section 5, Regulation XXVI. of 1814, it was provided that if the subject-matter of any plaint or petition of appeal could not, under the rule contained in the preceding clause of that section, be conveniently comprised in a single sheet or roll of the stamp paper prescribed for such plaint or petition of appeal, any additional sheets or rolls required for that purpose should be of the description of stamp specified in section 17, Regulation I. of 1814, and the like rule was declared applicable to any additional sheets required for the answer, reply, rejoinder, or other pleadings. The Court remark, however, that no corresponding provision is contained either in Regulation X. of 1829, by which all previous enactments relating to the imposition, levying, and collecting of stamp duties, have been rescinded, or in the Act under discussion, and they would, therefore, suggest for the consideration of government the expediency of reviving the former rule on this point as above quoted, and declaring any additional sheets required for the purposes therein stated, including

applications

No. 7.
On Stamps.

Art. 12.

applications for review of judgment amongst the papers referred to, shall be written on stamp paper of the value prescribed under the new Act for a pleading in the court wherein such papers may be filed.

10. To prevent any doubts which might arise as to the cases to which the concluding section of this article is intended to apply; that is to say, in which the plaintiff shall not be considered entitled to receive back any portion of the stamp duty paid on the plaint, the Court would recommend that the words " of any description," be added after " execution," and " by either party," can " be taken out." The article would then stand thus: " If the adjustment by rajenamah or soolehnamah be such as to require decree to pass, on which process of execution of any description can be taken out by either party, the plaintiff shall not be entitled to any refund of the stamp duty paid."

11. The Court observe that the object of the government in authorizing the courts in certain cases to refund to the plaintiff either the whole or a portion of the stamp duty paid on the plaint, is to encourage as much as possible such a complete adjustment of the matter in dispute amongst the parties themselves out of court, as shall render it unnecessary for the Court to exercise any further interference whatever in the case. This object is, however, obviously defeated where either party may apply to the Court either to recover the costs of suit, or to do any other act of that nature; and as the Court have reason to believe that this distinction is not sufficiently attended to, it has appeared to them desirable that the words above suggested should be added to the article in question for the information and guidance of both the courts and the community at large.

I have, &c.

Allahabad, 9 Feb. 1838. (signed) *H. B. Harington*, Register.

(No. 1469.)

To *J. Hawkins*, Esq. Officiating Register to the Sudder Dewanny Adawlut, &c. Fort William.

Sir,

S. D. A. N. W. P
Present: M. H. Turnbull, A. J. Colvin, and W. Lambert, Esqrs. Judges.

I AM directed by the Court to request that you will submit for the consideration of the Calcutta Court the accompanying copy of a letter from the Judge of Benares, No. 267, under date the 8th instant, regarding the stamp paper to be used for pleadings in cases referred to the principal sudder ameens, under the provisions of the first section of Act No. XXV. of 1837.

2. The Court observe that under the rule contained in section 20, Regulation V. of 1831, the pleadings in all cases up to 5,000 rupees in amount or value, referred for trial and decision to the principal sudder ameens, are required to be written on stamp paper of one rupee value, and as Act No. XXV. of 1837, in enlarging the powers of those officers, makes no provision on the point under reference, they are of opinion that as the law now stands, the same rule must be held to apply in respect to cases made over to the principal sudder ameens under section 1 of that enactment.

3. With regard to section 3, Regulation VII. of 1832, referred to by Mr. Mainwaring, the Court remark that the provisions of that section are applicable only to the courts of the zillah and city judges, and they are of opinion that the enhanced rate of stamp thereby prescribed for the pleading in those courts in certain cases, could not be extended to the courts of the principal sudder ameens without a specific enactment.

4. Should the Calcutta Court concur in the opinions above expressed, the Court propose to communicate them to the Judge of Benares, in reply to his letter under consideration, and at the same time to submit copies of the correspondence for the information of the Honourable the Lieutenant-governor.

I have, &c.

Allahabad, 15 Dec. 1837. (signed) *H. B. Harington*, Register.

No. 7. On Stamps.

(No. 267.)

To *H. B. Harington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

By section 3, Regulation VII. of 1832, pleadings in the courts of zillah or city judges, under Regulation V. of 1831, are to be written on paper of the value of four rupees, except in original suits for property not exceeding in value or amount 1,000 rupees, in which case they are to be written on stamp paper of only one rupee value.

2. By the operation of Act XXV. of 1837, the pleadings that have, under the rule above quoted, been written on paper of the value of four rupees, are now written on paper of only one rupee value, involving a very considerable loss to government. I beg to bring this to the notice of the Superior Court, and to be informed if it is intended that all pleadings in cases before the principal sudder ameens, without reference to amount, are to be received, as cases of limited amount have heretofore been, on stamp paper of the value of one rupee.

I have, &c.

Dewanny Adawlut, City of Benares, 8 Dec. 1837. (signed) *G. Mainwaring*, Judge.

(1470.)

To *G. Mainwaring*, Esq. Judge of Benares.

Sir,

S. D. A. N. W. P. Present: M. H. Turnbull, A. J. Colvin, and W. Lambert, Esqrs. Judges.

I am directed to acknowledge the receipt of your letter, (No. 267,) under date the 8th instant, and in reply to inform you that it has been found necessary to make a reference on the subject of it to the Calcutta Court. You will be apprised of the result in due course.

I have, &c.

Allahabad, 15 Dec. 1837. (signed) *H. B. Harington*, Register.

(No. 67.)

To *H. B. Harington*, Esq. Register of the Sudder Dewanny Adawlut, N. W. P.

Sir,

S. D. A. Present: R. H. Rattray, W. Braddon, Esqrs. Judges: W. Money, Temporary Judge. J. R. Hutchinson, and C. Harding, Esqrs. Officiating Judges.

I am directed by the Court to acknowledge the receipt of your letter (No. 1469), dated the 15th ultimo, and to observe that they concur with the Western Court in regard to the reply which it is proposed to make to the reference of the Judge of Benares.

I am, &c.

Fort William, 5 Jan. 1838. (signed) *J. Hawkins*, Officiating Register.

(No. 115.)

To *G. Mainwaring*, Esq. Judge of Benares.

Sir,

S. D. A. N. W. P. Present: M. H. Turnbull, J. A. Colvin, and W. Lambert, Esqrs. Judges.

1. The Court having again had before them your letter (No. 267), under date the 8th ultimo, direct me to communicate to you their opinion as follows, on the question therein referred.

2. The Court observe, that under the rule contained in section 20, Regulation V. of 1831, the pleadings in all cases up to 5,000 rupees in amount or value, referred for trial and decision to the principal sudder ameens, are required to be written on stamp paper of one rupee value; and as Act No. XXV. of 1837, in enlarging the

the powers of those officers, makes no provision on the point under consideration, the Court are of opinion, that in the existing state of the law, the same rule must be held to apply in respect to cases made over to the principal sudder ameens, under the 1st section of that enactment. No. 7. On Stamps.

3. With regard to section 3, Regulation VII. of 1832, referred to in your letter, the Court remark that the provisions of that section are applicable only to the courts of the zillah and city judges, and they are of opinion that the enhanced rate of stamp thereby prescribed for the pleadings in those courts in certain cases, could not be extended to the courts of the principal sudder ameens without a specific enactment to that effect.

4. I am directed to add that the Court have judged it proper to submit copies of the present correspondence for the consideration of the Right honourable the Governor-general.

I have, &c.

Allahabad, 26 Jan. 1838. (signed) *H. B. Harington*, Register.

Order.

Ordered, that copies of the foregoing papers be forwarded to the General Department in reply to the extract from that department of the 20th October 1837, (No. 165).

(True extract.)

(signed) *R. D. Mangles*,
Officiating Secretary to the Government of India.

(No. 307.)

From *H. T. Prinsep*, Esq. Secretary to the Government of Bengal, to *H. T. Prinsep*, Esq. Secretary to the Government of India, General Department. Unrecorded.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to transmit to you, in original, two letters from Mr. W. C. Hurry, and Baboo Prosunno Comar Tagore, dated the 17th and 27th ultimo, together with the drafts of replies made to those letters respectively, relative to stamps levied on kubooleuts and bonds of village gomastahs, and to request that the subject of the representation contained therein may be taken into consideration in connexion with the other questions regarding the stamp law of this presidency, which are now before the Legislative Council. Separate Department. Stamps.

I have, &c.

Fort William, 1 August 1838. (signed) *H. T. Prinsep*,
Secretary to the Government of Bengal.

From Honorary Secretaries to the Committee of the Landholders' Society to *H. T. Prinsep*, Esq. Secretary to the Government of Bengal in the General Department.

Sir,

WE beg respectfully to request that you will be pleased to lay before his Honour the Governor of Bengal the annexed correspondence between the Landholders' Society and the Board of Customs, Salt and Opium, on the subject of an increased stamp duty now levied on the kubooleut on the zemindary servants.

No. 7.
On Stamps.

As the case is fully explained in the correspondence, we deem it needless to recapitulate the details, and have therefore merely to add, that we hope his Honour the Governor will afford the relief which it appears is out of the power of the Board to grant, though they fully admit the justice of the request we have made to them, as we cannot think that it could ever have been the intention of the government, that the stamp duty should fall so heavily on those who are employed in collecting the land revenue.

We are, &c.

Calcutta, 17 July 1838. (signed) *W. Cobb Hurry,*
Prosunno Comar Tagore,
Honorary Secretaries.

From Honorary Secretaries to the Committee of the Landholders' Society to *S. G. Palmer,* Esq. Acting Secretary to the Board of Customs, Salt, and Opium.

Sir,

1. The committee of the Landholders' Society have directed us to represent respectfully to the Board of Customs, Salt, and Opium, the additional hardship to which that section of the community which they represent is subjected by an order of the Board, contained in their circular of 13th January 1836, directing that "an impression appearing to exist, that security bonds, when executed on the same sheet of paper containing the original or principal deed, are not liable to any separate or additional stamps, the Board of Customs, Salt, and Opium deem it necessary to correct such an impression, if it should also exist in your division.

2. We are requested to bring to the notice of the Board, that the above order most severely affects the landholders, particularly in regard to the kubooleut and security bonds they are in the habit of taking from their village gomastahs, and other zemindary servants, the salaries of the former being in general not more than three or four rupees per month.

3. The committee have carefully examined the original and subsequently modified Regulations bearing upon the subject, and also Regulation X. of 1829, consolidating into one, with modifications, all former enactments relating to the collection of stamp duties. They are unable to discover therein any direct provision that kubooleuts or bonds for the due execution of offices, and the security entered into with landholders and their village gomastahs, tuhseeldars, naib, peishkar, and other zemindary servants appointed for the collection of revenue, should be liable to stamp duty. But in practice, particularly subsequent to the enactment of Regulation XVI. of 1824, when any question between a zemindar and servant in connexion with the terms of his kubooleut or security was brought before the judicial and revenue authorities, they declared that such document is inadmissible unless it is written on stamp paper. Thus the landholders on many occasions were subjected to the prescribed penalty for a constructive omission.

The majority of the executive function arises in the absence of any direct provision in the Regulation, prescribing a stamp duty of eight rupees on the kubooleut; with reference to Regulation XVI. of 1824, Schedule No. 1, under the head of agreement not otherwise charged or expressed in it*, have sanctioned the admission of the deed with the security bonds inserted at the foot of the kubooleut, until the recent order of the Board hereinbefore mentioned. Thus the stamp duty at this period levied amounts to 16 rupees on persons ill able to afford it.

* So in original.

The provision in question for an eight rupee stamp on all deeds not otherwise expressed in the Regulation, was rescinded by the consolidated Regulation of 1829, which substitutes (*vide* Schedule (A.) No. 15), that contracts and deeds, if not otherwise charged or exempted from duty, should be stamped as agreements

Again

No. 7.
On Stamps.

Again, referring to the note of No. 3 of the said Regulation, it is found to be prescribed, that agreements for a purpose not restricted to, or specifying any amount, should be executed on such stamp as the parties may determine; but no recovery can be made on the instrument in any court of justice, of a larger amount than may be covered by the stamp at the prescribed in the schedule for bonds. Thus the amount of stamp duty leviable on kubooleuts of zemindary servants is hence involved in greater uncertainty. But supposing the average collection of each gomastah be computed at 1,000 rupees, the stamp prescribed for bonds of the same amount would be 10 rupees, and for a security deed also an equal sum, amounting on both to 20 rupees, being the cost of a set of kubooleuts and security bonds for a gomastah employed on a salary of three or four rupees per month.

Sic orig.

The Landholders' Society conceive that it was the intention of the government, apart from a consideration of the nature and provisions of the permanent settlement of land revenue in Bengal, &c., to make the stamp duties fall as lightly as possible upon the zemindars and their ryots, inasmuch as they have exempted all leases, viz. puttahs and kubooleuts, executed and exchanged with ryots and other actual cultivators of the soil, from stamp duty. They consequently conclude that the very oppressive nature of the recent order cannot be known either to the Board or to the Government, and they therefore beg to call your attention to the following circumstances.

1st. That the stamp now required amounts to at least one-half the average annual salary of the persons employed.

2dly. That the frequent changes in this description of servants, occasioned by removal, unfitness, sickness, and other causes, makes the duration of their services very short, so that necessity for fresh kubooleuts is perpetually recurring.

3dly. That the number of village gomastahs and other servants in a zemindary is so great that the stamps thus required become a serious addition to the amount of the sudder jumma, and is actually a tax falling directly upon the land.

We therefore respectfully submit that it cannot be the intention of the present government, any more than it was that of the government of those days which established the noble institution of permanent land revenue in Bengal, to increase the sudder jumma by any indirect taxation of the land, and consequently that the effect of the order above-mentioned has in all probability escaped the notice of the Board of Customs and of Government.

We have, therefore, to beg that you will be pleased to lay this representation before the Board, with our request not only for a re-consideration of their recent order, but also for an extension of the exemption for stamp duty on kubooleuts and securities between a zemindar and his servants, in the same manner as on leases exchanged with ryots, or else to fix the duty on such a moderate scale as in the wisdom of the Board may be thought equitable, and which may bear a fair proportion to the duty already levied on other instruments. In that case exempting only those servants who are in the receipt of salaries less than 10 rupees per month.

We are, &c.

Calcutta, 28 June 1838. (signed) *W. C. Hurry*,
Prosunno Comar Tagore,
Honorary Secretaries.

(No. 571.)

From *S. G. Palmer*, Esq. Acting Secretary to the Board of Customs, Salt, and Opium, to *William Cobb Hurry*, Esq. and *Baboo Prosunno Comar Tagore*, Honorary Secretaries to the Committee of the Landholders' Society.

Gentlemen,

Stamps.

I HAVE the honour to acknowledge the receipt of your letter, dated 30th ultimo, and, in reply, to express the regret of the Board of Customs, Salt and Opium at their inability to meet the request which it prefers.

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2. You will, the Board are persuaded, perceive on reflection the impossibility of such a compliance on the part of an authority entrusted only with the administration of the law enacted for their guidance. In the administration of the stamp law, as it now stands, the Board do not perceive that they have any option but to consider the kubooleuts of village gomastahs as falling under entry at No. 3, Schedule (A.), Regulation X. of 1819, and the security bonds (having reference to and giving value to such kubooleuts) as falling under entry No. 11 in the same Schedule and Regulation, with the reservation, of course, of those cases in which parties may choose to take kubooleuts under entry No. 1 of the Schedule, and security bonds under No. 12, with reference to a definite sum.

3. With respect to the other point, viz. the requisition of a separate stamp for a security bond written on the same piece of paper with a kubooleut, it does not appear to the Board that the order of the 13th January 1836, quoted by you, is opposed either to the spirit or letter of the Mofussil stamp law. If the observance of the order in question were not insisted upon, a wide opening would be left for defrauding this branch of the public revenue. A bond attached to a kubooleut gives additional security; it does not, therefore, seem inequitable, if bonds and agreements are taxed at all, to subject the writing affording such additional security to an additional tax; but more than this, there does not appear any sound reason why instruments which, to make them valid in the courts, must bear a stamp, say of 10 rupees each, if written on separate pieces of paper, should bear only one stamp of 10 rupees, simply because both are written on one piece of paper.

4. The interpretation of the law, against which you appeal, is no fresh construction put upon it by the present Board. It is on record so far back as 1832, and the orders to which you advert, of January 1836, were merely written to call attention to the Board's views on the subject, which were communicated in 1832 to the Superintendent of Stamps, but were not, it is apprehended, fully explained to the several officers of revenue at that time.

5. The arguments urged by you for a relinquishment or mitigation of the duties on the kubooleuts and bonds of village gomastahs appear cogent; but it is not the province of the Board to determine on the weight which they ought to carry. They have, as already explained, only to administer the stamp law as it stands; but they do not doubt that Government will be prepared to afford the most just and equitable consideration to any fairly-grounded suggestion for its amendment which the Landholders' Society may place before them.

Board of Customs, Salt and Opium,
11 July 1838.

I have, &c.
(signed) *S. G. Palmer*,
Acting Secretary.

(No. 299.)

Unrecorded.

From *H. T. Prinsep*, Esq. Secretary to the Government of Bengal, to *W. C. Hurry*, Esq. and *Baboo Prosunno Comar Tagore*, Honorary Secretaries to the Committee of the Landholders' Society.

Gentlemen,

Stamps.

I AM directed by the Honourable the Deputy Governor of Bengal to acknowledge the receipt of your letter dated the 17th instant, enclosing a correspondence with the Board of Customs, Salt, and Opium, relative to the rate of stamp duty leviable on kubooleuts and bonds of village gomastahs, and in reply to state that the subject of this representation will be taken into consideration in connexion with the other questions regarding stamps which are now before the Legislative Council. The society will be aware that Government has for some time had in contemplation an entire revision of the laws regarding the stamp revenue of this presidency, and a considerable advance has been made in this revision.

I have, &c.

Fort William, 25 July 1838.

(signed) *H. T. Prinsep*,
Secretary to the Government of Bengal.

No. 7.
On Stamps.

Unrecorded.

From Honorary Secretaries to the Committee of the Landholders' Society to *H. T. Prinsep*, Esq. Secretary to the Government of Bengal in the General Department.

Sir, Calcutta, 27 July 1838.

On the 18th instant, we had the honour of addressing and forwarding for your perusal a communication which we had received from the Board of Customs, Salt, and Opium, on the subject of the stamps levied on the kubooleuts of zemindary servants.

The Landholders' Society, however, are anxious that his Honor the Governor in Council should be put in possession of the reasons which prevent the society from fully concurring in the opinions expressed by the Board in their letter above referred to, and they have therefore desired us to express the same to you.

The Board observes, that in the administration of "the stamp law as it now stands, the Board do not perceive that they have any option but to consider the kubooleuts of village gomashtahs as falling under No. 3, Schedule (A.), Regulation X. of 1829, and the security bonds having reference to, and giving value to such kubooleuts, as falling under Entry No. 11 in the same Schedule and Regulation, with reservation of course of those cases in which parties may choose to take kubooleuts under Entry No. 1 of the Schedule, and security bond under No. 12, with reference to a definite sum." But all these quoted clauses have reference to a limited sum, and no recovery can be made on the instrument in any court of justice of a larger amount than may be covered by the stamp, at the rate prescribed in the schedule. Thus the representation made in the 5th paragraph of our letter to the Board, dated 28th June ult., is borne out, that the stamp duty leviable on kubooleuts of zemindary servants is hence involved in greater uncertainty.

The Board observes, "that with respect to the other point, viz., the requisition of a separate stamp for a security bond, written on the same piece of paper with a kubooleut, it does not appear to the Board that the order of the 13th January 1836 is opposed either to the spirit or letter of the mofussil stamp law." With due deference to the opinion of the Board, we beg to submit that the Regulation X. of 1829, being a Regulation merely consolidating the former ones, and affording a pledge in the preamble of the same, that its object is not to increase the burthen of the impost on the people, the question is now to be considered, whether the security bond was required to be written on a stamp prior to the said order of the Board. We beg to quote the highest judicial authority available, viz., the opinion of the Sudder Court on this point, (the copy of their circular, dated 22d September 1826, hereunto annexed,) from which it will appear, that the Court distinctly mention "that the security bond should be written on plain paper, until the Government should declare, by a formal enactment, the amount of the stamp paper on which they should be executed." The requisition of the Board for a separate special stamp to a security bond in the absence of an enactment, must appear not to bear out the construction of the Regulation, when generally the security bond itself was declared by the Sudder Court to be receivable on plain paper.

Besides, the Board allege as the ground of their resolution, that a bond attached to a kubooleut gives additional security, and is therefore liable to a separate tax. We also beg respectfully to differ from this opinion, and regret that, in arriving at this conclusion, the Board overlooked the spirit of the original stamp regulations, as embodied and expressed in the Regulation X. of 1829; for the stamp duty is leviable, not in reference to the additional security, but to the amount which constitutes the subject of transactions between individuals; otherwise every joint bond of parties, indorsee or acceptor of drafts and mortgagee of property to secure the amount of bond, all these giving further security to the advances of the principal sum, may, by the above principle adopted by the Board, be subjected to a separate full amount of stamp duty, which is obviously contrary to the spirit and letter of the existing Regulations.

It is also worthy of attention, that when an action is required to be brought before a court of justice against a principal and his security, in reference to a kubooleut, the plaint is to be filed against the parties jointly, and an award is given accordingly. It is therefore by no means a separate transaction, on which a separate stamp duty ought to be levied. Moreover, the records of the Board, or if necessary, a reference to the mofussil courts, will satisfy his Honor the Governor that it has been an universal practice to take a kubooleut and security on the same

No. 7. On Stamps.

same piece of paper, and it is admitted by the courts of justice, that such documents in no way infringe on the provision of the Stamp Regulation.

The Board, with reference to their order of the 13th January 1836, remark, that if the "observance of the order in question were not insisted upon, a wide opening would be left for defrauding this branch of the public revenue." The society beg to submit their opinion, that neither an alteration in the rate of stamp duty, nor the total exemption of certain documents from its operation, are in themselves likely to occasion frauds on the revenue, and they trust that his Honor the Governor will concur with them in thinking that a reduction of duty tends to diminish the temptation to the commission of fraud, as well in this as in other departments of the revenue. The Board admit the argument of the society for a reduction or mitigation of the duty now levied to be cogent.

They have therefore respectfully to request that you will lay this letter before his Honor the Governor in Council, in addition to the papers forwarded on the 18th instant.

We have, &c.
(signed) *W. C. Hurry*,
Prosonno Coomar Tagore,
Honorary Secretaries.

(No. 88.)

To the several Courts of Appeal and Commissioners of Cuttack and Rungpore.

22 September 1826.

It having been brought to the notice of the Court of Sudder Dewanny Adawlut, that there is no rule extant by which the value of security bonds for a specific amount should be determined, section 2, Regulation I. 1814, having been rescinded by section 3, Regulation XVI. 1824, and being the only rule which was applicable to the case, I am desired to communicate to you the opinion of the Court, that under such circumstances, instruments of the nature above specified should be received on plain paper, until the Government may declare, by a formal enactment, the amount of the stamp paper on which they should be executed.

You will be pleased to furnish the several judges within your division with a copy of the above construction, for their information and guidance.

(No. 306.)

Unrecorded.

From *H. T. Prinsep*, Esq. Secretary to the Government of Bengal, to *W. C. Hurry*, Esq., and *Baboo Prosonno Coomar Tagore*, Honorary Secretaries to the Committee of the Landholders' Society.

Gentlemen,

Fort William, 1 August 1838.

Stamps.

I AM directed by the Honourable the Deputy-governor of Bengal to acknowledge the receipt of your letter, dated the 27th ultimo, and, in reply, to state that the provisions of the existing stamp law noticed in your representation have already been brought under the consideration of the Government of India, and the point will be provided for in the revision of the stamp law which is now in progress.

I have, &c.
(signed) *H. T. Prinsep*,
Secretary to Government of Bengal.

Bengal: Sep. Cons. 1 May 1839. No. 14.

From *William Cobb Hurry*, Esq., and *Baboo Prosonno Coomar Tagore*, Honorary Secretaries to the Committee of the Landholders' Society, to *H. T. Prinsep*, Esq. Secretary to the Government of Bengal.

Sir,

Calcutta, 30 April 1839.

WITH reference to your letters of the 17th July and 1st August last, on the subject of the stamp duty now leviable on the kublet and security bonds of the village gomashtah and other zemindary servants, we are again requested to

bring

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On Stamps.

bring respectfully to the notice of his Honor the Deputy-governor of Bengal, that the severity of the tax is daily more urgently felt, particularly by that section of the community which forms a large majority of the people of Bengal, and whom the society have the honour to represent; but in hope of shortly being relieved from the demand, as they were led to anticipate by your letters above quoted, the society refrained from troubling the Government any further in the question.

The proposed modified enactment having been so long delayed, the society beg to submit, that his Honor may be pleased to adopt some measures for the speedy completion of the law in question.

We are, &c.

(signed) *W. Cobb Hurry*,
Prosonno Coomar Tagore,
Honorary Secretaries.

(No. 169.)

From *H. T. Prinsep*, Esq. Secretary to the Government of Bengal, to *W. C. Hurry*, Esq. and *Baboo Prosonno Coomar Tagore*.

Bengal: Sep. Cons. 1 May 1839. No. 15.

Gentlemen, Fort William, 1 May 1839.

Stamps.

I AM directed to acknowledge the receipt of your letter of yesterday's date, and, in reply, to state that the particular item of stamp duty objected to by the body of landholders represented by you has already been brought under the notice of the Legislative Council, and has been considered in the revision now in progress of the laws relating to stamps. His Honor the Deputy-governor of Bengal cannot say in this department when the revision in question will be completed; but your present representation will be transferred to the Legislative Department for further consideration, in connexion with the draft of Act before the Council of India on this subject.

I have, &c.
(signed) *H. T. Prinsep*,
Secretary to the Government of Bengal.

NOTE by Mr. *J. P. Grant*, Deputy Secretary to Government, General Department; dated 5th October 1838.

Unrecorded. Separate Dept.

(Original.)

NOTE of Points for Settlement when the New Stamp Act is under consideration.

THE proposed Act originated thus: Mr. Saunders, the late Superintendent of Stamps, in the year 1834 suggested to the Board of Customs, first, the making of some alterations of detail in the internal management of the Stamp-office; and secondly, the making of some new rules for the determination of cases in which parties might bring documents that ought to have been originally executed on stamped paper, praying to have them stamped after execution. The Board approved of these suggestions, and recommended their adoption, but they pointed that some of them could not be adopted without the previous enactment of a law. The Government of India approved of the suggestions connected with the internal details of the Stamp-office, and ordered them to be carried into execution; and it directed the Board to prepare the draft of an Act for carrying into effect the second class of suggestions, which required the enactment of a new law.[1] The Board accordingly prepared and submitted a draft of a law of the nature required.[2] This draft and the papers connected with it, which had been received in the Separate Department,[3] were made over to the Legislative Department, and from thence transmitted to the Indian Law Commissioners, with a letter[4] by which the Commissioners were ordered to frame the draft of an Act for amending the existing rules about stamps in the particular matters pointed out in the papers transmitted, and if it could be quickly done, at the same time to consolidate into one new law the whole of the existing stamp laws of this presidency. In the same letter, the Government of India conveyed their opinion that provision ought to be made by law for preventing the reception in evidence by the Supreme Court of all documents

Letter, dated 28 Nov. 1834.

Letter, dated 16 January 1835.

[1] Letter, dated 10 February 1835. Separate Dept.
[2] Letter, dated 1 Sept. 1835.
[3] Recorded in the Separate Department, under date 20 October 1837.
[4] Letter, dated 26 October 1835.

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ments not written on stamped paper, which would not be receivable in evidence by the courts of the interior, because not written on stamped paper. At the same time, the Government of India inquired of the Governments of Madras and Bombay, first, as to the prices of stamps and the documents requiring stamps, whether any objections existed to the adoption universally under those presidencies of the schedules of stamps now in force on this side of India; and secondly, whether there were any objections to prohibiting by law the production in evidence before the Supreme Courts of these presidencies of certain documents, if executed on unstamped paper, in the same manner as the production in evidence before the courts of the interior of those presidencies of similar documents, if prohibited by law. The Law Commissioners prepared the draft of an Act, with two schedules, and sent it for the consideration and suggestions of the Board of Customs, &c.[1] who returned it with their remarks contained in several separate papers.[2] After taking these remarks into consideration, the Law Commissioners revised the Draft Act, originally prepared by them, and one of its Schedules (A.), leaving the other Schedule (B.) as it had been first drawn, and submitted the result of their labours to Government about the beginning of last year.[3] In the meantime a reply had been received from the Government of Madras,[4] inclosing correspondence between that Government and the Sudder Adawlut and Board of Revenue there, and one from the Government of Bombay,[5] inclosing correspondence between that Government and the Sudder Adawlut, the zillah judges and the superintendent of stamps there. All these communications were taken into consideration in the Legislative Department in March 1837, when the Government of India resolved to suspend all consideration of a new stamp law for the presidencies of Madras and Bombay, and to make over the papers received from the Law Commissioners (which relate only to this presidency) for consideration in the General (Separate) Department. These papers were brought upon record in that department on the 20th of October 1837, with a note by the Secretary, Mr. Prinsep,[6] and minutes by the Honourable Mr. Ross,[7] the Honourable Mr. Shakespear,[8] and the Right honourable the Governor-general Lord Auckland.[9] On the date on which these minutes were recorded, it was ordered that a reference should be made to the Courts of Sudder Dewanny Adawlut, in order to obtain the suggestions of the judges of these Courts upon the proposed Act, and the second Schedule (B.) attached to it. This was accordingly done through the Judicial Department and the Governor of Bengal, and the Lieutenant-governor of the North Western Provinces. The reply of the Sudder Dewanny Adawlut at Calcutta,[10] and that of the Sudder Dewanny Adawlut at Allahabad,[11] have been received in the Judicial Department[12] and transmitted to this department,[13] in which they have been laid before Council and undergone some consideration. More lately a second packet of papers from the Government of Madras[14] has been submitted to the Government of India. This relates to the frequency of the forgery of documents, notwithstanding the stamp laws; and some correspondence[15] that has lately passed between the Government of Bengal and Landholders' Society, upon a particular provision of the existing Bengal Stamp Regulation, has also been lately submitted to the Council of India.

Schedule (A.) for deeds; Schedule (B.) for law proceedings.

No. 21 of Legis. Cons. 6 March 1837.

Present state of the case.

2. The whole subject is again laid before the Council Board, with the following note (prepared by their order) of points noticed in the papers above adverted to, which require to be now discussed and finally determined before preparing the contemplated Act for transmission to the Legislative Department, in order to its being there read for the first time. The Law Commissioners, it will be observed, do not profess to have submitted a draft of a stamp law "exactly" in the shape in "which they could recommend that it should be passed."

Points of principle.

3. Points of principle will first be noted.

No. 1. Stamps on Judicial Proceedings. Schedule (B.)

4. Of these the greatest is the question, whether to continue, as at present, to require judicial proceedings before the Company's courts of this presidency to be upon stamped paper, or give up the revenue now derived from this source. If the latter alternative be resolved on, Schedule (B.) will be cut off bodily.

5. The

[1] Letter, dated 22 April 1836.
[2] Letter, dated 27 July 1836, and 4 Oct. 1836.
[3] Letter, dated 21 February 1837.
[4] Letter, dated 18 March 1836.
[5] Letter, dated 12 July 1836.
[6] Leg. Cons. 20 Oct. 1837, No. 32 *a*, no date.
[7] No. 33, dated 14 Sept. 1837.
[8] No. 34, dated 17 Sept. 1837.
[9] No. 35, dated 5 October 1837.
[10] The Letter, dated 12 January 1838.
[11] Letter, dated 26 January 1838.
[12] Judicial Cons. (No. 4) 19 March 1838.
[13] Not yet brought upon record in the Separate Department.
[14] Secretary's Letter, dated 13 August 1838.
[15] Secretary's Letter, dated 1 August 1838.

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5. The Indian Law Commissioners have avoided the expression of any opinion upon this great question in their letter to Government. But in their letter to the Board, wherewith they transmitted to that body their draft, as originally prepared by them, they write as follows: "The Commissioners entertain great objections to the imposition of stamp duties upon legal proceedings, and until the general question of the expediency of this measure shall be decided by competent authority, they think it preferable not to interfere with the rules at present existing on the subject." On that principle they took their Schedule (B.), by which stamps on legal proceedings are regulated, from the corresponding Schedule of Regulation X. of 1829, with no material alteration. The Board suggested to them some changes in that Schedule, but the Commissioners have not prepared a revised Schedule (B.), as they have done in respect of Schedule (A.), although they say in their letter to Government, on the supposition that Schedule (B.) is retained, "the Government will observe that there are several propositions of the Board connected with it, in which the Commissioners have expressed their concurrence." The Sudder Courts and the Board have expressed no opinion on this question. Mr. Ross has recorded a strong opinion against the exaction of stamp duties on law proceedings. The late Mr. Shakespear has recorded an opinion "directly opposed" to that of Mr. Ross on this subject. Lord Auckland has recorded his opinion as being, on general grounds, adverse to taxing legal proceedings; but looking at the question comparatively as between this tax and others, his Lordship says, "whether amidst the many objectionable taxes which yet exist in various parts of the empire, bearing upon the prosperity and well-being of the people, this is the most objectionable of all, and should first be repealed, may well be doubted. I would not aggravate the evil by making the tax heavier than it is at present, but I do not think that we are yet in a condition to remove it."

6. By the Bombay Regulations suits for sums under rupees 100 are not charged with stamp duties. One of the judges under that presidency, Mr. Simson, Judge of Dharwar, objects to this exemption on general principles. He thinks it oppressive to the poor, because they are in consequence thus obliged to repay what they have borrowed, their richer creditors not being any longer prevented from suing them by the expense of prosecution. Mr. Simson, in another communication, has stated that the average expense of prosecuting a suit in a Bombay zillah is 20 per cent., whereof 5 is for vakeels, and of the remaining 15, the greater part, is for stamps, which he observes is a heavy tax for justice, more especially where it is doubled if the case is appealed once, and trebled if it be carried to a second court of revision. On the other hand, Mr. Elliott, the Acting Superintendent of Stamps, recommends that the limit under which suits are received free of stamp duties, on the legal proceedings, be raised higher than it now is, under Regulation I. of 1814 of the Bengal Code. He quotes Mr. Elphinstone, who says that where a certain amount of revenue must be raised, he would tax anything else rather than suits for property under rupees 100 in value. Sir R. Grant, the late Governor of Bombay, and both members of Council there, entirely concur in this last opinion.

This Regulation is not now in force, having been repealed and superseded by Regulation X. of 1829. But by neither Regulation are suits, for however small a sum, admitted free of stamp duty. All plaints in all Company's courts must be on stamped paper, but pleadings, exhibits, &c., in moonsiffs' courts are allowed to be on plain paper. In Bombay, suits for amounts under 100 rupees are altogether free of stamp duty.

7. I have endeavoured to ascertain what proportion of the stamp revenue raised in Bengal is derived from stamps on legal proceedings, but in consequence of there being no distinction amongst the stamps used, except as to value, and of the same value often covering either a legal proceeding or a legal instrument, it is impossible to ascertain this. The accountant in the Judicial and Revenue Departments for Bengal does, however, obtain an account of all stamps filed in the courts of law, which he credits to the Judicial Department. That account was in the two past years as stated in the margin. If any similar separation is practised in the North Western Provinces, Madras, Bombay, the result is not known in the office of the Accountant-general here. It must be observed that the revenue above classed under the head of "Judicial" does not include the whole revenue derived in Bengal under Schedule (B.) as a part of that revenue arises from proceedings in the offices of collectors and others. It may therefore be safely assumed that more than half the

Stamp Revenue, Bengal.

	1836/37.	1837/38.
Judicial - - -	10,68,242	9,77,003
General, including all stamps not judicial -	8,27,651	10,02,773
Total Stamp Revenue in Bengal - -	18,95,893	19,79,776

Memorandum of Stamp Revenue of all India.

	For 1836/37, as per actual Receipts and Disbursements.	For 1837/38, as per Monthly Register of Receipts & Disbursements.
Bengal - - - -	18,95,893	19,79,776
North Western Provinces -	10,74,363	11,75,447
	29,70,256	31,55,223
Madras - - - -	4,54,663	4,64,363
Bombay - - - -	3,86,944	4,16,251
Total Company's Rupees	38,11,863	*40,35,837

* *N.B.*—The receipts and disbursements for 1837/38 not having been rendered, the results, as per monthly registers of receipts and disbursements, have been entered in this column, between which and the actual receipts and disbursements for that year some small difference may be anticipated.

the whole revenue derived in India from stamps arises from stamps upon legal and official proceedings. In the margin is a memorandum of the whole revenue realized from stamps in India, obtained from the Accountant's office.

8. It has occurred to me that there might be an advantage derived from requiring all stamps to be used in legal proceedings (Schedule B.) to be upon a peculiar description of paper, or paper bearing some distinguishing mark upon it, of which stamps the accounts might be kept separate. I am not aware of any great practical difficulty or inconvenience to be expected from such a rule, and it would enable the Government at all times to see exactly how much revenue is derived from stamps on formal instruments, which seems to be regarded by most of the authorities as the produce of a fair tax, and how much is dependent on the continuance of stamps on judicial proceedings, which seems to be regarded by many of the authorities as the produce of a bad tax.

No. 2. Extension of the proposed new Stamp Act for Bengal to the provinces under Madras and Bombay, 26 Oct. 1835.

9. When the Law Commission were first desired to frame a new Stamp Act, the subordinate governments were asked whether there were any objections to making the Schedule of stamp duties in force in Bengal applicable to the provinces under them respectively. When their replies, together with the Act prepared by the Law Commission, were considered by the Council of India in the Legislative Department, it was resolved as follows:

Resolution, Leg. Department, 6 March 1837.

10. "It appearing from the replies received from the presidencies of Fort St. George and Bombay, that *the rules which it proposed to enact under the presidency of Fort William relative to the stamp revenue are not applicable to the state of things at those presidencies*, the consideration of any new rules as regards this branch of the public revenue at the other presidencies may with propriety be suspended."

11. This point, therefore, is one that seems to have been resolved upon; but there is matter in the papers which I have been ordered to arrange that requires to be noticed, especially with reference to the above Resolution, and to notice that matter here as a separate point will tend to perspicuity. It is, moreover, possible that the point may still be thought worthy of being kept open till a further reference shall be made to the subordinate governments after the publication of the Draft Act.

12. The words of the Resolution in *italics* will not, I fear, without explanation, convey an accurate idea of what the returns from Madras and Bombay really contain. The governments and subordinate authorities of these presidencies, when they submitted their returns, had never had before them "the Rules which it is proposed to enact" here, and they could therefore give no opinion as to the applicability of those rules to their own provinces. It was only the existing Bengal schedule of stamp duties on which they had been asked to speak. As far as the body of the Act goes, which will be equally applicable, whatever may be the rates of stamp duty, if the new provisions be an improvement upon the general provisions of the existing Bengal Regulations, there is nothing in the returns from Madras and Bombay now before Government tending to show that they will not be an improvement upon the existing laws there. The question whether they would or would not has not yet been asked.

13. As respects Madras on the point asked, viz., the introduction into that presidency of the Bengal rates of stamp duties, the government of that presidency say that "from the papers now submitted, the Supreme Government will observe that there are important objections to the implicit adoption under this (the Madras) presidency of the Bengal Schedule of stamp duties." After a careful perusal of the papers alluded to, it seems to me that this observation of the Madras Government should be understood strictly in a limited sense, for a qualified adoption of the Bengal Schedule is apparently recommended in these papers. The Register of the Madras Sudder Court says, "Although the adoption of the Bengal stamp duties at this presidency would occasion a material change, they (the judges) are of opinion

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nion that, with a few modifications, they might be introduced here with advantage; and particularly adverting to section 8, Regulation V. of 1831, that the use of stamped papers for the plaint in the moonsiffs courts, in lieu of the institution fee, would be a very desirable change." Proceeding to details, the judges observe that the stamp duty on records would be considerably raised, "yet not to an extent that is objectionable." Stamps on plaints and appeals would be little altered, except as regards suits for land, in which they would be altered, in consequence of a difference between the two principles of valuation adopted. The judges, not for local reasons, but upon general principles, object to requiring a stamp on security and bail bonds in criminal cases; upon similar grounds, and none other, they object to requiring petitions to criminal courts or magistrates being upon stamped paper. These objections apply with no more force to Madras than to Bengal.

This, it will be afterwards seen, is the increase to which the Board of Revenue object.

14. The Madras Board of Revenue go into a detailed comparison of the rates. They observe that the exemption from duty on all instruments where the sum does not exceed 64 rupees, which is now granted by the Madras Regulation, would be withdrawn by the adoption of the Bengal Schedule. They think that to draw the line at 20 rupees, instead of at 64 rupees, would be an improvement, but they would not take away the exemption entirely. The stamps on bonds and on promissory notes and bills of exchange, at dates of more than a year, would, in the majority of transactions, be very much increased; but on promissory notes and bills of exchange at shorter dates, the rates would generally be reduced. For receipts, &c., the rates would be greatly reduced. The Madras rates are the same for promissory notes and bills of exchange at short dates as for those at long dates, and the rates are the same for all sorts of bonds, bills of exchange, receipts, bills of sale, mortgages, contracts, &c. This the Board do not think just or expedient, and they recommend that the discriminating principle of the Bengal Schedule be adopted at Madras, whereby the duty on some sorts of instruments would be lessened, though they are not prepared to recommend so great an increase upon some other sorts of instruments as would result from the unqualified adoption of Schedule (A.) They object to the provision of the Madras Regulation II. of 1825, whereby persons on payment of tenfold duty may demand that any old deed shall be stamped, preferring the provision of the Bengal Regulations, whereby good cause must be shown in order to obtain such an indulgence. They are, however, aware that it has been proposed here to alter the latter provision so as to assimilate it to that of the Madras Regulation.

15. So far the only objection on local grounds is the increased tax on certain instruments, whilst as regards general points, the Board seem to advocate the adoption of the Bengal scheme. It must, besides, be remembered that the schedules of the new Act may be so amended before passing as to differ considerably from those of the existing Act to which the Board refer; and it will be borne in mind that if the tendency of the amendments (as is probable) be the complete exemption of some classes of instruments now taxed both in Bengal and Madras, and the exemption of other classes of instruments when for small amounts, which are now exempt in Madras but not now exempt in Bengal, the objections of the Madras Board to some provisions of the Bengal Schedule will be at least weakened, even if not removed.

16. As regards stamps on legal proceedings the Bengal and Madras rates are much the same; but the Board observes that as moonsiffs have a higher jurisdiction at Madras * than in Bengal,† in order to make by one enactment the rate of duty substantially the same under each presidency, some change of wording must be introduced as respects Madras. This applies of course only to pleadings, &c.; not to plaints.

* Rupees 1,000.
† Rupees 300.

17. Mr. Macleod, the Madras member of the Indian Law Commission, objects to assimilating the rates of stamp duty under Madras to the rates here. "The stamp duties," he observes, "at present are lighter under the Madras Government than under that of Bengal, but the taxation generally is very much heavier."

18. It is fitting here to observe that the Stamp Regulation now in force at Madras (Regulation XIII. of 1816), is taken almost entirely from the old Bengal Regulation (I. of 1814), under which stamp duties were levied in Bengal before the passing of the Stamp Regulation now in force here, Regulation X. of 1829; and that, except the subjecting to the tax of instruments for amounts under 64 rupees, almost the only material alterations that would be made by the "implicit" extension

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extension of the Bengal Regulation to Madras would be those very alterations which, the last time the subject was before the Supreme Council, it was thought advisable to introduce into Bengal. The principal difference between the old Bengal or present Madras Regulation and the new Bengal Regulations is, that by the latter conveyances, bonds, promissory notes or bills of exchange, receipts, and a few other classes of instruments, are taxed at various discriminative rates of per-centage; whereas by the former all classes of instruments are taxed at one and the same rate of per-centage.

19. The judges of the Bombay Sudder, in answer to the question put to them about the Bengal and Bombay Schedules, state their opinion, not only on the Schedules, but also on the Regulations themselves. They say the Bombay Stamp Regulations and Schedule appear to the judges to possess a very decided and great advantage over those of the Bengal Code, on the grounds of conciseness and perspicuity; they combine also great facility in operation, which, judging from the multiplied number of Regulations in Bengal, would appear to present an additional "preference in favour of the Elphinstone Code. The clauses of the latter are few, and provide in a clear but comprehensive manner for every species of stamped instrument, whether of compact or of a judicial character, whilst the Bengal Regulations are complex and voluminous, and appear to the judges to contain numerous nominal distinctions of instruments, which under our system are reduced to a few natural and appropriate classes. The only advantage in favour of the Bengal Schedule, is that in general the stamp duty is not so heavy as ours. Under this view, the judges think the only portion of the former which it would be desirable to adopt is that by which the scale of amount would be reduced in the Bombay Code."

20. Thus upon the most material point, viz. the assimilation of rates, the Bombay Sudder judges are favourable.

21. As to the classification of the Bombay Schedule, it is observable that the number of classes being the smaller, is no proof of the classification being the better, and that the first object of a stamp law is to make the tax fall properly. It has just been seen that the Madras Board of Revenue object to the Madras Schedule because its classes are too few, and in order that the tax should be laid on with more discrimination, propose to increase the number of classes by following the Bengal Schedule. The comparative excellence of the Bombay and Bengal classifications can only be tested by a careful comparison in detail. As respects legal instruments, it can hardly be said that the classes of the Bombay Regulation are "few;" in fact there are no classes of such instruments, all that are taxed at all being taxed by Section 10 and Appendix (B.) of that Regulation (XVIII. of 1827), at one and the same per-centage rate. If therefore the discriminative principle of the Bengal Schedule be right, the indiscriminative principle of the Bombay Regulation must be wrong. This question is a general, not a local question.

22. The relative merits of the Bombay Regulation and of the existing Bengal Regulation, which will be repealed by the proposed new Act, not being in question, need not here be adverted to.*

23. It may, then, be fairly said, that as to the chief point on which local reasons can operate (the general rate of duty) the Bombay Sudder are favourable to assimilation. In the points in which they are unfavourable they are so for general reasons, which apply here as much as there. If they are found upon consideration to be right in these points, the inference will be, not that the Schedules of Bengal and Bombay should not be assimilated, but that the Bengal Schedule should be assimilated to that of Bombay.

24. The late Governor, Sir R. Grant, and the Council of Bombay, concur in the opinions of the Bombay Sudder Court.

25. Mr. Elliott, the Superintendent of Stamps at Bombay, observes that the adoption of the Bengal Schedules would increase the tax in many instances, and add

* Probably in speaking of the multiplied number of Regulations in Bengal, the judges of the Bombay Sudder unknowingly had in view Regulations that have been repealed. There is but one Stamp Regulation now in force in the mofussil here, and but one in the town of Calcutta. Mr. Hutt, acting judge of Ahmednuggur, thinks the Bengal Regulations have the advantage of the Bombay and Stamp Regulation, as being more explicit in all points, and leaving less room for doubt. Neither authority had seen the proposed new Act.

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add to the number of deeds and instruments now required to be executed on stamped paper. This is somewhat different from what the Sudder Court observe as to the rates generally, though the two statements are quite compatible.

26. As the proposed new Act differs materially from the existing Bengal Regulations, as no authority at Madras or Bombay has yet seen that Act, and the returns from these authorities are such as have been above described, perhaps it may still be deemed advisable, notwithstanding the terms of the Resolution above quoted, when the draft now before the Council has been revised in detail and read a first time, to ask the government of the subordinate presidencies to state whether any, and if any, what, objections exist to its extension to those presidencies. As respects the Schedules, if the Bengal rates should still remain too high for Madras, a schedule corresponding to Schedule (A.) might be suggested, to apply only to the interior of that presidency, in which the general rates might be lower than those of Bengal, but fixed upon the same discriminating principles as those of Schedule (A.) for Bengal; and the Bombay Government, which will doubtless approve of the rates, might be requested to suggest such general improvements in the scheme of both Schedules as it might think desirable, after comparing them with the existing Bombay Schedules.

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27. If Schedule (A.) be amended by exempting some of those instruments whose exemption is contemplated in some of the minutes of members of Council, the arguments in favour of a general assimilation, both of law and rates, will be very greatly strengthened.

No. 3.
Extension of the the Act and Schedule (A.) to Calcutta.

28. All the members of Council, and all the members of the Law Commission, agree in thinking it both just and expedient to place the inhabitants of Calcutta, in respect to the invalidity of legal instruments not upon stamped paper, and in respect of the rate of duty upon such instruments, upon precisely the same footing as the inhabitants of the interior.

29. The Act, as prepared by the Law Commission, provides for this object.

No. 4.
Extension of Act to town of Madras and island of Bombay.

30. If the rates of duty in the interior of all the three presidencies were to be assimilated, the question of the extension of a stamp law to the town of Madras and the island of Bombay would be much simplified. But if the rates under the several presidencies remain, as they now are, various, this question will be complicated. To be discussed without confusion it must be separated into two propositions: first, to assimilate the condition of all the inhabitants of each presidency in respect of stamp duties on legal instruments. This would be done by making the proposed Act extend to such part of the presidencies of Madras and Bombay as are within the jurisdiction of the Supreme Courts, substituting for Schedule (A.) in respect of these places, respectively, Schedules exactly similar to the corresponding Schedules in force in the interior of its own presidency; or, secondly, to assimilate the condition of the inhabitants at all the three capitals in respect of stamp laws generally. This would be done by extending the whole of the proposed Act, with its Schedule, to those two places.

Schedule (B.) would not apply within the jurisdiction of any Supreme Court, except (as now drawn) in respect of petitions to magistrates.

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31. Here again I must explain why I venture to set this down as a point still to be determined on, notwithstanding the Resolution above quoted, for by a strict construction of that Resolution this would no longer be an open question, and both the above propositions would appear to have been virtually negatived. If in treating the matter thus I have gone beyond my duty, and thereby presented for a second discussion a point that ought to have been considered as at rest, I respectfully beg to be forgiven. I do not conceal that the resolution in question does not strike me as a necessary consequence of anything in the returns, on which it is avowedly founded. Moreover, the matter is one of importance, and may bear repeated consideration. The placing of the inhabitants of one presidency town, for the first time, in fact, though not in law, in a worse condition than those of the other two presidency towns, is a serious matter for consideration. If this Act passes in the manner now proposed, the inhabitants of Calcutta will, for the first time, feel, in their pockets, that they live under a stamp law. From the complaints they made against the passing of a stamp law, the existence of which they knew merely from declamatory speaking and writing, and which never touched them where a real tax is felt, the complaints they will make when a law is passed which will touch them personally from the moment of its passing, may be conjectured. The unanswerable reply, and I believe the only reply, to all such

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complaints is, that it is unjust in a government to allow any section of the community, protected at the common charge, to escape their fair share of any tax, which in its nature is a general tax; that it is peculiarly unjust when the favoured section is in the aggregate a particularly wealthy and a particularly well-protected section. But how can that reply be given if the Government of India is rigorous only towards Calcutta, and continues to allow the inhabitants of Madras and Bombay to do what it protests it can no longer in justice allow the inhabitants of Calcutta to do. The Government which passed the Calcutta Stamp Ordinance was the Government of Bengal, and in attempting to equalize the tax on the provinces and the capital of Bengal, it attempted to do all it had in its power to do towards equalization. But the Government that will pass this Act will be the Government of India, and it will be from choice, and not from necessity, if it allows distinctions avowedly to remain between Calcutta, Madras, and Bombay. It is a strong conviction on this point that has emboldened me to take this opportunity of placing at length this question, and one before noticed, a second time under the view of the members of the Government.

Para. 1, No. 3.

32. It may be assumed, from the general opinions recorded in the papers before the Council, that the enactment of an efficient law, which will enforce a stamp duty upon legal instruments in all the capitals in the same manner as is now done in the provinces, has been declared to be just and expedient by Mr. Ross and Mr. Shakespear, Colonel Morrison, Sir C. Metcalfe,* and Mr. Macaulay, when members of this Government; also by Messrs. Macleod, Anderson, and Millett, of the Law Commission; by all the members of the Madras Government; by the judges of the Madras Sudder Court; by the members of the Madras Sudder Board; by the judges of the Bombay Sudder Court, and by the superintendent of stamps at Bombay. Mr. Farish, one of the members of Council there, thinks that if the Stamp Act is effectually enforced in Calcutta, it ought to be so also at Madras and Bombay, where the mercantile taxes ought to be equal, all being parts of one great empire. The late Governor of Bombay, Sir Robert Grant, and Mr. Ironside, are the only authorities who have expressed a contrary opinion. The arguments which have been urged by these authorities, and which must now fall to be decided upon by the Council of India, are the following:—

* Who concurred in Mr. Macnaghten's letter to the Law Commission, dated 26 October 1835.

33. Sir Robert Grant argues against the imposition of a stamp tax in Bombay—

1st. That imposing a few stamp duties in common will not make the law of the presidencies and that of the provinces identical.

2d. That so far as regards stamps on law proceedings, the process of law being different, the same nominal tax upon legal process would be really a very different tax in the two places.

3d. That the island of Bombay being the great seat of demand and consumption, pays indirectly a great proportion of the taxes originally levied directly in the provinces, and thus the argument in favour of the tax as an equalizer of taxation is either distroyed or greatly weakened.

4th. That the justice available at Bombay is not so much more excellent than that available in the provinces, as it is palpably dearer, even now when there are stamps in the provinces and none at Bombay.

5th. That Bombay is a mercantile place; that a stamp tax by its very nature presses much harder on a mercantile people than any other tax, because it pre-eminently falls on the circulating of property, which is the life of all commerce. In these arguments the Honourable Mr. Ironside has concurred.

34. It will be observed that Sir R. Grant seems not to have considered the question of stamps on legal instruments and stamps on legal proceedings as distinct questions. It is plain, however, that the Government of India contemplated the introduction into places within the jurisdiction of the Supreme Courts of the former tax only. The Honourable Mr. Farish drew this distinction in his minute, but the Governor did not in consequence add anything to his own former minute. As respects the only question now to be considered, arguments 1, 2, and 4, are inapplicable; of the other two arguments, 3 and 5, it is to be observed that they are quite general, and that if they are good for Bombay, they are good for Calcutta, and *vice versâ*. It seems, therefore, that even if it be determined to confine the present question to Calcutta, by excluding Madras and Bombay from this Act, these arguments, coming from so high a source, will still demand an investigation and a decision.

See Mr. Secretary Macnaghten's letter to the Law Commission of 26 October 1835, copy of which was circulated to the subordinate Governments.

35. With

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35. With regard to No. 3, it seems to me to be open to this remark, that without entering into a discussion of the correctness of the general assumption on which it proceeds, it certainly does not apply to the case in hand; for whatever proportion of other taxes levied in the mofussil a Bombay consumer may pay, he must evidently pay no proportion of the stamp tax. For example, a Bombay consumer, as such, can neither directly nor indirectly pay any part of the stamp tax levied on the sale of a house at Poona. Of argument 5, it may, I think, fairly be observed, that even admitting the assumption that a stamp tax falls heavier on commerce than on funded and landed property, agriculture or manufactures, still to exempt only the commerce of one town in a whole country, cannot be otherwise than unfair. If a tax on commerce is levied at Surat, and not levied at Bombay, surely the commercial people of Surat are discouraged, to the advantage of the commercial people of Bombay. This argument, if a good argument, is against the tax absolutely; but let the tax be abstractedly considered a good or a bad tax, it ought to be levied fairly from all, from Englishmen as well as natives, Bombay man as well as Goozerattee. If the tax be ever so bad an one, to levy it partially can only make it worse. If it be, as assumed, unfair as respects classes, to add to its unfairness by making it also unfair as respects places will not mend the matter.

36. If the provincial stamp duties remained at various rates, it will be impossible to avoid some anomaly. The question for consideration seems to be, by what plan will the anomaly be the least. There seems to be three courses—

1st. To adopt neither of the propositions stated in para. 30 of this Report. In this case, as either one of the presidency towns will be subjected to the tax, whilst the other two are exempted entirely, or all three of the presidency towns will be exempted entirely whilst the rest of India is subjected to the tax, the anomaly will certainly be the greatest, in fact as well as in appearance.

2d. To adopt the first of the two propositions above stated, viz., the equalization of the rate of duty in the capital and provinces of each presidency, the anomaly will be avoided of having one rate of duty on one side of a merely ideal line, and another rate on the other side.

3d. To adopt the second proposition, namely, the equalization of the rate within the jurisdiction of all the Supreme Courts, the anomaly will be avoided of having different rates in three towns, under the same Government and Legislature, distant from each other indeed, but differing from each other in no material circumstance except that of locality.

37. The Law Commission would seem rather to advocate the first proposition. They say "It is undoubtedly expedient, the Commissioners think, to extend to the jurisdictions of the Supreme Courts at Madras and Bombay the general rules for the collection of the stamp duties, established or which may be established under these presidencies, that the operation of the law may be uniform, and that the residents within these jurisdictions should not enjoy a virtual exemption from it." Still it strikes me, that in another light the preference may not be so easily given to the first proposition. Each presidency town is the seat of a local government; each is a small isolated spot, exclusively under the English form of law; each is the greatest commercial port under its own local government; the external commerce of all three is with the same ports; each is the only place within hundreds of miles where European inhabitants not in the employment of Government reside in any considerable number. In this view, each presidency town may seem to have more circumstances in common with the other two presidency towns than with the interior of its own provinces, at least of such circumstances as are material to a question of this nature. Hence, perhaps, though the former anomaly might be the greater in appearance, the latter might be the greater in reality.

38. The assimilation of the rate of duty over India generally, supposing that practical, would obviate all anomalies, and would place this branch of revenue under an uniform law, easily comprehended and easily dealt with, if requiring at any time revision; and it can hardly be said that the practicability or impracticability of such a measure has yet been sufficiently ascertained.

No. 5.
To what places under the presidency of Bengal the Act shall extend.

39. As the draft of the Act stands, it will introduce the law into Assam, Tenasserim, Arracan, the Straits Settlements, the South-western Frontier Districts, Kumaon, and many other newly-acquired territories, where stamps of no description are now required. Mr. Ross is of opinion that in the present unimproved condition

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condition of these territories, the stamp law, neither as respects legal instruments nor legal proceedings, ought to be introduced into them. Mr. Shakespear proposed, instead of excluding any part of the territories under the Government of Bengal, that the Governor-general of India in Council should have power to exclude such part as he might deem fit. Lord Auckland objects to introducing such a law as this into provinces so rude as Assam, Arracan, and Tenasserim. His Lordship would reserve the question of introducing the law into the Straits Settlements until the receipt of Mr. Commissioner Young's expected Report. His Lordship objects on principle to giving the Executive Government a dispensing power, and wherever the law is to have force he would have it introduced by special legislative enactment.

No. 6. Exemption of Instruments relating to Small Values.

40. The Act as drawn up would tax all instruments, however small the value of the matter to which they relate. Mr. Ross would exempt entirely all instruments relating to a less value than 100 rupees, on the ground that a tax in them yields little revenue, and discourages the preparation of written evidence of transactions of small value, and thereby increases the business of courts. To this proposal Mr. Shakespear has objected.

41. By the present Bengal Regulations instruments for the smallest values are subjected to a stamp tax. By the Madras Regulations all instruments for a value not exceeding 64 rupees, are exempted from all stamp tax. The Madras Board of Revenue are of opinion that the line ought to be drawn at 20 rupees instead of at 16 rupees. By the Bombay Regulations all instruments for a value not exceeding 16 rupees are exempted. By the Schedule as drawn, the only exemption, on account of the smallness of the value of the matter, is that of simple receipts for less than 50 rupees. By the English Act, agreements relating to matters of a less value than 20*l.* are exempted.

55 Geo. 3, c. 184, Sched. (P.) 1, head "Agreement."

42. If Mr. Ross's proposal be adopted in whole or in part, one of the greatest objections that have been made to the extension of the rates of the proposed Schedules to all the presidencies will be obviated.

No. 7. Retention of the tenfold Fine as the maximum Penalty.

43. Section 4 of the Draft Act would provide that any instrument on unstamped paper, wheresoever executed, shall be receivable in evidence if accompanied with a copy thereof upon a stamp of ten times the value prescribed for such an instrument.

44. Mr. Ross objects to this provision, that it will render the whole law inoperative, because the risk of tenfold payment in the very improbable case of a recorded agreement being disputed, will be so small, that few will take the trouble to secure themselves against it. Mr. Shakespear appears to have felt the force of this objection. Lord Auckland observes that a similar provision has been found in England sufficient to induce a pretty general resort to stamped paper; but that it is doubtful whether such would be the effect of this provision in India, where there is great confidence amongst native merchants in commercial transactions. But his Lordship observes, that he knows of no better plan, and that the irremediable exclusion of unstamped documents from the courts would sometimes lead to hardships too grievous to be borne.

Sec. 14, Reg. X. of 1829.

45. Nothing has been said of any middle course, such as that of the existing Bengal Regulations, whereby the revenue authorities have power to put a stamp upon unstamped documents, on payment of a fine, when the want of a stamp is owing to "accident, ignorance, inadvertence, error, or from other unavoidable cause," or to the fault of a party not the possessor of the document, or even when the Board shall be satisfied that by refusing to stamp the document the party will be subjected to great and unmerited hardship. It does not appear what practical evil has resulted from this state of the law, nor that any inconveniences that may now and then have been felt from it cannot be remedied by amendment as well as by repeal. If too much is now left to the Board's discretion, it would not seem difficult to lay down more definite rules by which their judgment should be guided.

46. I greatly doubt whether the example of England can be relied upon with perfect safety in the present question, because the stamp law which it is proposed to introduce into India differs from the English stamp laws in this most important particular, that the rejection of unstamped documents in courts of law is the only provision by which the proposed Indian law attempts to enforce the use of stamps; whereas in England, besides a similar provision, there are very heavy penalties directly

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directly imposed for omitting to use stamps in a great variety of cases; for example, there is a penalty of 50*l.* for making, accepting, or paying bills, orders, and promissory notes, not upon stamped paper*. There is a penalty of 20*l.* for attorneys' clerks or other persons, who prepare any formal instruments on unstamped paper†. In Ireland there is a general penalty of 20*l.* for any persons who make, issue, or receive instruments on unstamped paper‡. For evading, or rather, for trying to evade the duty, by writing more than one instrument on one paper, false dating, &c., there are still higher penalties, and the penalties above instanced are not a hundredth part of the whole.

* 55 Geo. 3, c. 186, sec. 2 *et seq.*

† 37 Geo. 3, c. 19, sec. 3; 37 Geo. 3, c. 90, sec. 9; continued by 55 Geo. 3, c. 186, sec. 8.

‡ 56 Geo. 3, c. 56, s. 56, continued as in last note.

47. In fact, in England the rejection of unstamped documents by the courts is only one of many inducements created by the law, to make people use stamps; here it will be the sole inducement. Moreover, even in England some papers, viz. bills of exchange, promissory notes, orders, &c., cannot be stamped after being made, even upon the payment of any fine; and the fine under which persons may get other documents stamped is not, as far as I can discover, a fine of ten times the value of the proper stamp, but a fixed fine, in some cases of 10*l.*, in other cases of 20*l.* over and above that value. As it is in small matters that evasion is most likely, this penalty is probably in general more effectual than a tenfold fine.

37 Geo. 3, c. 136, sec. 1.

37 Geo. 3, c. 136, sec. 2.

48. The imposition of fixed and certain penalties on the use of unstamped paper, even without any regard to the law respecting written evidence in the courts, may, perhaps, in England of itself be almost enough to enforce very generally the using of stamps according to law; for though the penalties are seldom actually inflicted, (perhaps never in the case of an individual making casually an instrument on unstamped paper,) yet their existence is enough to oblige all respectable houses of business and attorneys to use stamps in all matters connected with their business. Now, in England this includes the great majority of cases requiring the use of stamps; almost all formal instruments are there prepared by known professional men. But in the interior of India the case is very different, the most formal deeds are drawn by no one knows whom; in India, therefore, there being no certain penalty, and none at all except a higher duty in case of the instrument being actually required for production in some court, it will be a mere matter of calculation whether to use a stamp or not. Can the result be doubted? No man is so unfortunate as to be involved in a lawsuit about one out of every ten of the ordinary transactions in which he is engaged. Consequently, in all cases at least in which the instrument is not of a permanent character, few men who are allowed an option, will be so foolish as voluntarily to pay for a stamp unless they happen to want to produce the document requiring a stamp in some court, and then they will pay the tenfold fine, which will render the unstamped document available. Thus they will pay 10 rupees to save, perhaps, 990. In such cases, therefore, this provision will certainly cause a loss of revenue, and will convert the revenue left from a tax on legal instruments into a tax on legal proceedings.

49. But the question can hardly now be argued upon probabilities. The experiment has been tried in India with bad success. Formerly in Madras unstamped documents were absolutely excluded from the courts. In 1825 the tenfold payment, which it is proposed to introduce here, was substituted in Madras for the former absolute exclusion. The Madras stamp revenue has fallen off very greatly of late years, and the falling off has been attributed mainly to the introduction of this provision. It is stated that the practice in the Madras provinces now is to execute upon stamped paper only such instruments as the parties expect to be brought into a court of judicature; and that the receipt of revenue from tenfold payment bears but a small proportion to the loss of revenue on documents that are never stamped at all. The Madras Board of Revenue intended to propose the repeal of this provision and the adoption of a provision similar to that of the present Bengal Regulation*, when they were surprised by observing that it was intended in Bengal to make exactly the contrary alteration †.

Sec. 3, Reg. II. of 1825.

* By which stamp is obtainable on an unstamped document by payment of a fine only upon cause being shown for claiming that indulgence.

† Pro. Bd. Rev. 22 Nov. 1836.

No. 8.
Exemption of Bills of Exchange, Promissory Notes, Drafts, &c.

50. Mr. Prinsep suggested that bills of exchange (or hoondies) should be entirely exempted from stamp duty. The Honourable Mr. Ross proposes to exempt generally bills of exchange, or hoondies, promissory notes issued by persons in trade, and all other instruments which, without being attested by witnesses, pass from hand to hand in commercial transactions, on the ground that the tax falls very

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very heavily on trade where it is paid, but will produce little revenue, because it will seldom be paid, the value of commercial paper depending on the credit of the house issuing it. The late Mr. Shakespear agreed to the exemption of "bills of exchange," hoondies, &c. Lord Auckland has no doubt that "hoondies and other circulating paper" ought to be exempted. I presume it is the intention to include drafts in the exemption; if so, the whole of the third head of Schedule (A.) will be omitted.

51. I am not sure whether Mr. Ross intended to exempt promissory notes, &c., executed by persons not in trade. He observes, promissory notes and other instruments "executed by order or in favour of persons not engaged in business, which do not pass from hand to hand in commercial transactions, and which relate to a value of considerable amount, may be subjected to a stamp duty; that is, a duty imposed on such instruments may be realized, because they would not serve the purpose for which they are executed if the rule requiring them to be written on a stamp were evaded."

52. If all instruments of this description, by whomsoever and in whosesoever favour executed, be exempted, both the law and its administration will be clear; but if a distinction be drawn, dependant upon the calling of the party by whom an instrument is executed, and that of the party in whose favour it is executed, there may be reason to fear that the administration of the law will be very difficult. The question of whether a certain person was at a certain time a trader or not is very often one of great difficulty as a matter of evidence, and sometimes I believe as a matter of law also. Yet if such a distinction be made in this Act, that difficult question, a case of itself, will have to be gone into by the courts every time an unstamped note or bill is put in as an exhibit. Besides, as regards even the framing of the Act, it seems doubtful how far the principle on which the distinction is founded, can be carried out into practice. Bills of exchange are often drawn by or in favour of persons not in trade, which afterwards pass amongst commercial men from hand to hand, just as the bill of one merchant in favour of another passes. Such also is often the case with promissory notes, and drafts or cheques are as often executed by persons not in trade as by persons in trade, and a draft would seldom be refused for want of a stamp.

53. It does not seem probable that much revenue would be sacrificed by exempting all instruments of the nature in question, without reference to the calling of the parties: the efficiency of a tax on such papers must depend chiefly upon the degree of general dependance which commerce has upon the state law. In England it has been already remarked, that not only is there a very heavy fine on making, issuing, or paying unstamped papers of this sort, but by a special exception the Commissioners of Stamps are prohibited from stamping such papers after they have been executed; thus it is apparent that even in England laws of peculiar stringency are thought necessary for enforcing the use of stamps for such papers as these. Yet there, from the frequency with which commercial transactions are brought into question in the state courts, commerce has a very great general dependance upon the state law; but in the provinces of India, commercial transactions are very seldom brought into question in the state courts, consequently commerce has scarcely any general dependance upon the state law; that is to say, the law administered by public courts of justice. The practice in respect of hoondies, or bills of exchange, is proof of this. At this moment, and for two years back, it is certain that no hoondee or unstamped paper is worth a cowry in any court in the Bengal provinces, and it is equally certain that in these same provinces no hoondee is ever drawn upon stamped paper.

This will not seem very strange when it is considered that a flourishing commerce has existed in India time out of mind, and that until within a few years ago, there have been no respectable or efficient state courts in existence.

No. 9. Exemption of Receipts stipulating for payment of Interest.

54. The Law Commission observe upon this head of Schedule (A.) (39) that they entertain great doubts as to the expediency of the provision. They believe receipts from agents, bankers, &c., do not usually contain any stipulation (or rather agreement) for interest; at any rate, they think that if such receipts are taxed, none of that sort will continue to be given. The Board think that if it is desirable to bring such receipts really under the law, the entry in the schedule should be "receipts, &c., if the same shall not show on the face of them that no interest is payable." The Law Commissioners, referring to the opinion stated, leave this point for the determination of Government. I observe a remark by Mr. Prinsep

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in pencil, that it would be better to omit this provision entirely, because it could always be evaded by rendering an account current instead of a receipt. I do not observe any similar distinctions amongst receipts, either in the English* or Irish† Stamp Acts.

* 55 Geo. 3 cap. 184.
† 56 Geo. 3, cap. 56.

55. If this omission be determined on, the whole of head 39 will be omitted. This would leave the same rate of stamp duty for receipts acknowledging interest to be payable as for simple receipts.

No. 10. Exemptions of Bills of Lading.

56. Bills of lading, which are now liable to a stamped duty of one rupee each in Calcutta, by the Calcutta Regulation XII. of 1826, have not been entered in Schedule (A.), as prepared by the Law Commission. The Commissioners excluded these documents, because they are not now traced at the outports, and to have entered them in this Act, which is to have general effect, would have been to propose a new tax, so far as the outports are concerned.

57. It is now for the Government to determine whether to impose this tax or not.

No. 11. Exemption of Agreements by Letter through the Post.

58. By the Act as drawn, which in this follows the existing Bengal Regulations, agreements are subjected to stamp duty, but from this rule are exempted arguments "made by letter through the public dâk between merchants and other persons."

59. To the wording of this exemption the Law Commissioners object, as not clearly showing whether it is meant to apply only to cases where one party is a merchant and the other party is not a merchant, or also to cases where both parties are merchants, or neither party is a merchant. This objection of detail remains, for the Law Commission have not attempted to amend the wording. Regulation XII. of 1826 requires, to bring such agreements within the exemption, that the distance between the parties in correspondence shall be 40 miles: this is not required by the schedule prepared by the Law Commissioners, which is taken from Regulation X. of 1839. The Law Commissioners think that the object of this rule, which they were not aware of, ought to be ascertained before passing it. The Board suggested to them that the object may have been not to make people pay both postage and stamp duty which, as the Law Commissioners observe, seems a very improbable supposition.

60. The object doubtless is to allow litigants to produce letters in courts as evidence of agreements. But why merchants alone should be thus favoured I cannot conjecture; nor do I know why letters sent by express or by private hands (the transmission of such being here legal) should not be exempted, if letters by post are exempted. The limitation of distance seems also difficult to be accounted for. If a man has to write a letter of business to a correspondent, in which he has to commit himself to an agreement, it is no more difficult for him to inclose an agreement on stamped paper if his correspondent is 1,000 miles off than it is if he is 10 miles off; so also it is no more difficult to send such a stamped agreement by post than it is to send it by a private hurkaru from one street to the next.

61. I presume that writings which are not agreements, but merely preliminary to an agreement, will not require a stamp, whether such writings be interchanged through the post or otherwise. And if it is upon general principles proper to exclude from being evidence in courts, writings which are agreements, unless such writings be on stamped paper, it is difficult to imagine how it can be less proper to do so because those writings have been put into a mail bag. Where such wire-drawn distinctions are not necessary to prevent a general rule from operating harshly, they are certainly better omitted; and where they are necessary there must ever be a strong presumption against the expediency of the general rule.

62. It should, however, be noted that a somewhat similar exemption exists in the English Stamp Act, sec. 55, Geo. 3, cap. 184, sched. part 1, head "Agreements." Letters containing agreements respecting merchandize, and passing by post between merchants or other persons carrying on trade 50 miles from each other, are exempted; so also are all agreements relating to the sale of wares, for leases under a rent of 5*l.* per annum, between master and man, and respecting certain insurances, besides agreements for the hire of labour, which would be exempted by the proposed Act as the schedule now stands.

No. 12. Exemption of Bonds for good conduct given by Factors to Landholders.

63. The Landholders' Society have represented the heavy expense to which the proprietors of rent-paying estates are put, by being obliged to take kubooleuts or covenants which they require from their gomastahs or factors upon stamped paper. They

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They say that the salary of a landholder's village gomastah is generally not more than from three to five rupees a month. They compute the average collections of such a gomastah at 1,000 rupees: supposing security to that amount be required, the stamp on the gomastah's covenant would be 10 rupees, and on the bond of his surety 10 rupees, in all 20 rupees; and it is said that the frequent changes of gomastahs makes this a heavy tax. The Landholders' Society assume, from the circumstances of leases (pottahs) and agreements (kubooleuts), between ryots and proprietors of land being exempted from stamp duty, and from other circumstances that the intention of Government is to make stamp duties fall as lightly as possible on parties connected with land; they conclude, therefore, that the tax of which they complain has escaped the notice of Government.

It is not stated whether this is the collection of a month, or six, or a year.

64. The Landholders' Society have further objected to a decision of the Board, which requires the kubooleut duty and the surety bond duty to be both paid when the two instruments are executed upon the same bit of paper, in like manner as both duties are indisputably demandable when the two instruments are executed on separate bits of paper. Considering that the instruments are distinct, and the parties to them different individuals, this objection requires no discussion.

64*. It does not appear what the necessity of taking any covenant at all from a village gomastah is. The agent is equally liable, civilly and criminally, for any malversation, whether he has signed a covenant to behave himself properly or not. The acceptance of his office must bind him to perform the duties of it.

No. 13. Favourable rate of Mortgage Duty where Bankers are Mortgagees.

65. The general stamp duty on mortgages or pledges is the same as on bonds; but when goods are pledged to a banker or agent for a loan, the proposed Act would require a lower rate of duty than for a similar pledge, made for a similar purpose, to a person of any other calling. The Board observed, that they do not clearly apprehend "why this description of mortgage or assignment should not bear the same duty as any other mortgage." To this the Law Commissioners only say, that they "do not feel themselves prepared to recommend to Government to alter the existing tax on the banking and commercial transactions, which fall under this article, by putting them on the same footing with other transactions which fall under the preceding number."

66. No reason is urged for making any distinction; I cannot discover that there are any similar distinctions in the English Acts. This seems a wire-drawn distinction, open to remarks similar to those made above, under No. 12. The principle is questionable, and as yet unsupported by argument; there seems, too, reason to believe that the working of the law would be full of difficulty, and cause the waste of much valuable time in the courts. Any man may call himself a banker or agent at a moment's notice; and if, at the same time, he lends money, which is a banker's business, it will be hard to prove that in that transaction he was not a banker. The tax on pledges for short terms may generally be too high, or it may not; if it is, it can be lowered; if it is not, what is the peculiar disadvantage under which bankers labour, in the pursuance of their proper calling, that can make a tax which falls lightly upon a casual money-lender fall oppressively on them?

67. The proposal is to make the duty on mortgages to bankers the same as on bills of exchange. If it is determined to levy no tax on bills of exchange, it will have to be decided,

First, Whether these mortgages to bankers shall be altogether free of duty, whilst other mortgages pay a considerable tax.

Second, Or whether they shall be rated as a class *per se*.

Third, Or whether they shall be left undistinguished from similar mortgages to other people.

No. 14. Exemption of Duplicates, &c. of Deeds and of Collateral Deeds.

68. By the orders of Government, noted in the margin*, duplicates and triplicates of instruments liable to *ad valorem* duty (though not of instruments liable to fixed duty), are exempted from duty. The Law Commission do not see reason to exempt duplicates, &c.; they observe, that there is no occasion to use a duplicate, except when the original is not forthcoming, and in that case they say it cannot be known whether the original is stamped. But they add,

* 26 July 1827, 15 February 1831.

"Any

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"Any advantage, however, which, on further explanation, may be found likely to arise from the adoption of the Board's suggestion, will no doubt be duly considered by the Government." The Board's suggestion was to make the Act specifically empower Government to exempt from duty any deed or instrument or duplicate thereof; and the orders exempting duplicates were cited as an example of the effect of such a power. It is not quite clear whether the Law Commission, by the words above quoted, intended to submit to the consideration of Government the question of adding any special clause, giving the Executive Government a general exempting power, or the question of exempting duplicates from duty. The Law Commission seem to have the latter point in view, and the Board, had the former. The latter point will here be noticed.

For the former point, *see* No. 16.

69. The objection urged by the Law Commission to exempting counterparts, arising out of an apprehended risk of the revenue being defrauded, is not perhaps of itself fatal to the proposition; for it is easy to provide that such counterparts only shall be exempt as have a certain peculiar stamp of the proper value upon them, which stamp would express the value of the stamp impressed on the original deed, and would only be impressed upon inspection of that deed, or the counterpart instrument might be prepared (upon paper peculiarly stamped as above explained) in any stamp collector's office, from the regularly stamped original.

70. The question then seems to be narrowed into this: is it or is it not advisable to tax one transaction doubly, if it requires two instruments, counterparts of each other; trebly, if it requires three, and so forth, especially when that necessity arises, not from the nature of the transaction, but from some peculiarity in the situation of the parties? For example, a deed executed in India, if it require to be sent to England, cannot prudently be executed but in duplicate or triplicate, for fear of loss at sea. Though this will be, as has been shown, imposing a new tax practically, the Law Commission have proposed to do so.

71. The present rule, as practically enforced, taxes duplicates counterparts of instruments on which a stamp of a fixed value is required, in direct proportion to the number of such counterparts executed, but it exempts duplicates or counterparts of instruments liable to *ad valorem* duty. In the case of an *ad valorem* stamp, the very principle on which the rate is assessed shows that the object is to tax the transaction according to its magnitude, and according to no other circumstance. If so, the doubling, trebling, quadrupling, &c., the tax upon some few of such transactions, which differ from others only in the number or location of the parties, seems out of principle. In many cases in which the duty is *ad valorem*, this would cause great hardship. It does not follow that a stamp of some moderate and fixed value should not be required; to require such a stamp on every duplicate, where the main duty is levied *ad valorem* upon the original deed, would seem reasonable, if only to pay for trouble to defray the cost of the special stamp that must be impressed, and in return for the individual convenience afforded. Such seems to be the principle recognized by the English stamp laws in cases of conveyance, where the *ad valorem* duty exceeds 2*l*. If this view be correct, the rule now in force, under the orders of the Executive Government, would seem preferable to that proposed by the Law Commissioners, and it might be improved by imposing a stamp duty at a fixed amount on all counterparts of instruments taxed by an *ad valorem* duty.

No. 15.
Additions to List of Stamped Instruments.

72. Mr. Prinsep says, "There are an immense number of things taxed by stamp in England which are not so here; as newspapers, advertisements, appraisements, probates, &c. &c. Such taxes," he adds, "there can be no present necessity to introduce." Newspapers pay postage here, which they do not do at home. But of the other things alluded to by Mr. Prinsep it may be observed, that it is proposed in future to exempt many things now taxed by stamps, therefore it may not be amiss to consider if anything can with propriety be substituted for those exempted. Of a stamp on advertisements it may, I believe, be said, that it is free from all consideration of the tax in money, namely, the tax in the trouble and inconvenience of getting a stamp on a petty occasion. Some things taxed by a stamp in England, but untaxed here, are noted in the margin.

Admissions, such as to the Bar, &c.; Affidavits not in Law Proceedings; Appraisements; Certificates of Marriage; Marriage Licences; Notarial Acts; Passports; Procurations; Protests; Recognizances; Schedules referred to in Stamped Instruments; Seisin Instruments. Other Instruments are specified under Point No. 78.

No. 16.
Power of executive Government to exempt particular classes of Deeds.

73. Under Point No. 14 is mentioned a proposition of the Board to give in the Act a special power to the Executive Government of exempting any class of deeds from

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from stamp duty, and an example is given of the exercise of such a power under the present Regulation. The present Regulation does not, that I can observe, give any such general power; and whether such a power is inherent in the Executive Government may be a question. By Head 6, of Schedule (A.) of Regulation X. of 1829, a power of compounding with banks for promissory notes is expressly reserved by the Governor-general in Council, and in case of such a composition the notes require no stamp; a similar provision is specially made in the body of this proposed Act. Hence it may be an inference, that where no similar power is reserved, none exists. Whether it is right that the Executive Government should possess such a power may also be a question. Doubtless it can excuse the payment of the price of a stamp if it pleases; but it does not thence follow that it can exempt any instrument, still less any class of instruments, from the necessity imposed by law of having a stamp, in order to the being received in evidence. The exercise of such a power, supposing it to exist, certainly affects private interests, and therefore seems of questionable propriety.

No. 17. Extension of Powers of Executive Government as to prescription of form, size, materials, &c. of Stamped Instruments, and the stamping of private materials.

74. Generally it is to be observed that the Act prepared by the Law Commission gives the Executive Government extensive powers, which it never had before.

75. Under the Act, as prepared by them, say the Law Commissioners, it rests entirely with the Executive Government to determine whether a particular size shall be prescribed for the stamp required by any description of writing. Not only that, but the material and shape of every legal instrument, or at least of the last sheet of every legal instrument, is in the same manner to be prescribed by the Executive Government.

56 Geo. 3, c. 56, sec. 36.

76. By the present Regulation parties have, by law, a right to bring their own materials, and have them stamped, on paying the stamp duty. There is no such provision in this draft. Such a right is given by law in Ireland, and probably in England, though I cannot trace the provision. The Board suggested the propriety of inserting a provision to this effect, but the Law Commissioners remarked that the Executive Government would always, if it thought fit, have power to make rules for allowing parties this indulgence. But if it is indispensably necessary to allow parties to have their own materials (parchment, vellum, ornamental paper, &c.) stamped on application (which the Board say it is), the indulgence, will, I presume, be invariably allowed, without distinction, to all who ask it, and who tender the price of the stamps. Perhaps in order to prevent abuses, some rules may be necessary, under which this indulgence must be granted. This is nowhere said to be the case; but assuming that it is so, it as easy to make the necessary rules now as after the Act is passed. If they are made now, and form a part of the Act, they will be generally known; if made hereafter by an Order of Council, they will be generally unknown. If applications are to be granted or refused at discretion, according to no certain rules, great abuses are inevitable. On the other hand, if all applications are to be granted as a matter of course, or under some defined rules, it is not easy to see what objection there can be to giving all parties a legal right to that which it is never intended to refuse them. If only as putting all such applications more out of reach of petty annoyances, and extortions from official underlings, which it must do, the right will not be valueless.

77. This objection seems much of the nature of the objection in principle felt by the Right honourable the Governor-general to giving the Executive Government the power of fixing to what places the Act shall extend. This is not a matter that is of a changeable nature, such as to require constant change of rule to meet constant change of circumstances. The rules about the material, size, &c. of the stamps, and the right of having private materials stamped, which are fitting to-day, will be fitting for an indefinite length of time.

78. Should these views be correct, section 3 of the draft will require further consideration.

Points of Detail.

79. Points of detail come now to be noticed. These will be treated in the order of section, schedules, and heads, upon which they arise.

No. 18. Another Regulation to be repealed. Act, sec. 1.

80. After the words "Regulation XII. of 1826," some words to the following effect are requisite: "And the corresponding Regulation, which was enacted on the 14th of June 1827," and registered in the Supreme Court at Calcutta on the 12th of July 1827; Regulation XII. of 1826 not having been registered, was held to have no force.

81. The

No. 19. Effect on Past Transactions. Act, sec. 1.

81. The Board remark that this section will leave persons who executed instruments on plain paper, whilst the old Regulations were in force, still liable to prosecution and penalty under them. The Law Commissioners think it right that this should be so.

No. 20. Verbal, Stamp or Stamps; Act, sec. 3.

82. In several places where the word stamp is used in the singular, the Board suggest that the words "or stamps" be added. It will be quite impossible to have a stamp for every value that may be required. But the Law Commission think that under this section the rules of the Executive Government, which is empowered "to prescribe from time to time the stamp to be used," (the word stamp being defined in section 32 to be "a stamped piece of paper, or material for writing on,") may sufficiently provide against this inconvenience. As far as regards one paper, on which two or more stamps are impressed, the value of which in the aggregate equal the value required by law, the provisions of the proposed law seem sufficient; but to have one paper stamped with sundry impressions, it would be necessary to send it to the head stamp office, which may be 1,000 miles off. The Board probably meant to provide in some cases for two or more distinct stamped papers being used instead of one of an equal aggregate value. In one case at least, namely, that stated at the end of section 4 of the Act (the tenfold penalty), there would be great inconvenience if no such provision were made; and I hardly think that the Act as drawn would clearly authorize the Executive Government to make such a provision. For the Executive to prescribe the size, shape, material, &c. of a stamp is one thing, and for that this law will give authority; but it seems another thing, where the law requires an instrument to be on a stamp of a certain value, for the Executive to prescribe that it may be on a stamp of a lower value, provided that stamp be accompanied by other stamps, making up an aggregate value equal to that required by law for the stamp on which the instrument is written.

No. 21. Verbal. Act, sec. 4.

83. For the words "by His Majesty's charter," occurring in this and the next section, perhaps the words "Royal Charter," or "Charter from the Crown," might be substituted.

No. 22. Effect of Old Regulations on Past Transactions. Act, sec. 4.

84. The Regulations repealed remain in force as regards matters that shall have taken place before this Act shall be passed. By Regulation X. of 1829 instruments on plain paper cannot be received in evidence in the Company's courts. By this section such instruments can be so received, if accompanied with a copy on a tenfold stamp. I do not know whether this relaxation will apply to instruments already executed; I should think not, as the old Regulation remains in force in regard to them. Yet I doubt if it was the intention of the framers to except such instruments from the indulgence.

No. 23. Optional Stamps produced by a Defendant. Act, sec. 5.

85. Where the proper duty on documents is fixed, and where that document is on unstamped paper, or on paper stamped with a stamp of too low a duty, section 4 sufficiently prevents either plaintiff or defendant from making use of that document, by preventing its reception, as creating, transferring, or extinguishing any right or obligation, or as evidence. But where the proper duty is optional, as is the case with the greater part of documents, the only rule by which parties are forced to have a stamp of a value truly corresponding with the value of the documents, is that of section 5, by which no sum greater than that which is covered by the stamp used shall be recoverable, by reason of any document having an optional stamp. This does very well where the document is produced by a plaintiff, but it leaves untouched documents of a nature to require an optional stamp when produced by a defendant; such documents, though relating to matter of the value of 10 lacs of rupees, would serve a defendant as well if executed on a stamp of one anna as on one of 950 rupees. Take, for example, an agreement not to sue in a certain matter, to forego a claim, &c. &c. So also of agreements, deeds, or bonds, on which specific suits might be originated, but which are used by a defendant as sets-off. Perhaps the substitution of the words "recovered or extinguished," for the word "recoverable," might obviate this objection.

No. 24. Optional Rule. Act, sec. 5.

86. There appear to me to be difficulties attendant on the extended introduction of the rule regarding optional stamps contemplated by the framers of this Act. It will have place in all agreements, bonds, deeds, and settlements of every description. In transactions of a nature to be the foundation of suits I see no difficulty; but in subsidiary transactions I see what seem to me great difficulties. I beg to refer for a detail of these to Points No. 78 and 79.

No. 25. Act, sec. 7, Receipt.

86.* The Board propose to add to this section a provision, making it lawful for the party to whom a receipt is to be given to refuse payment till a signed receipt, on a proper stamp, is tendered to him. The Law Commission think the section as it stands sufficient; because, they say, the interest of the party to whom payment is due, who will generally not receive payment till he tenders a stamped receipt, will protect the revenue. Will not what the Board propose to make lawful by special enactment, be lawful as a matter of course, without any special enactment? A man can hardly be bound to pay a debt without getting a lawful acquittance. If this be not so, perhaps the Board's proposal may demand further consideration.

No. 26. Application to Supreme Court, Act, sec. 8.

87. The manner in which the Act excludes suits in the Supreme Courts from stamps on legal proceedings is by omitting from Schedule (B.), which specifies what proceedings in what courts shall be liable to stamp duty, all mention of the Supreme Court. Mr. Prinsep proposes to make the exemption by a specific exception, with the reason assigned, that the Supreme Court is excepted, because fees are levied through the officers of court wherewith their salaries are paid.

No. 27. Act, sec. 10, Appointment of Venders, &c.

88. May not the appointment of venders, and the other powers here specified, be given to the Governor of Bengal?

No. 28. Act, sec. 11, Sticking up the Act.

89. Should not provision be made that the copy shall be in the vernacular language of the province? In Calcutta an English copy will also be necessary.

No. 29. Act, sec. 12, Rules for Venders.

90. The Madras judicial authorities recommend that more minute rules should be framed for venders, with a view to checking forgeries.* They recommend that the stamps of each value shall be numbered; that every vender shall be obliged to sell them in regular order, according to their numbers; that he shall keep a book in which the date, the number, and value of the stamp, the name of the buyer, the name of the person for whom bought, and the use to which it is intended to put the stamp, shall be recorded. But those who propose this plan admit that it will not be fully efficacious, and they add, that the only effective check to the forgeries, which they complain of as being prevalent in an extreme degree, is a system of registration.

* Secretary to Government of Madras, 23 July 1838.

See Point No. 34, Act, sec. 13.

No. 30.

91. The Board propose that instead of making the vender write his name, &c. on the back of the stamp, to be allowed to write it anywhere on the stamp; for venders sometimes write their names, &c. high up on the face of the stamp towards the margin, to enable purchasers to continue the engrossment on the reverse side of the sheet. But the Law Commission think this unnecessary, because if the vender writes his name near the bottom of the reverse side it will interfere as little with the engrossment as if written in front near the top. However, this reply seems open to the remark that the place of indorsement will thus be left a matter of favour, whereas the vender ought to be obliged always to write his name where most convenient purchasers generally; either the bottom of the reverse side or the top of the obverse side will be equally convenient, and the law might specify one or other place without being open to any objection that I can see.

No. 31. Act, sec. 14, Payment.

92. Mr. Prinsep, as I see by a pencil note suggests that for the words "currency which the vender is duly authorized to receive in payment for stamps," the following words be substituted, &c. "currency which is a legal tender at the place of vend."

No. 32. Act, sec. 15, Restriction to Money Payment.

93. This penal section, intended to check extortion, will hardly be very effectual. If a vender wants to change a two rupee stamp for the brass lotah of an intending purchaser who has no money, it will only be necessary in order to avoid this penalty for the vender first to buy the lotah for two rupees, and then to sell the stamp for the same money.

No. 33. Act, sec. 18, Examination of Venders' Accounts

94. In order to oblige venders to show their accounts to any officer deputed by a collector, as well as to that officer himself, Mr. Prinsep, in a pencil note, proposes after the word "district" to add the words "or any officer deputed* by the collector for that purpose." The Judges of the Sudder Court of Calcutta have proposed a similar addition in other words; they suggest the words "or other authorized person."

* *Qy.* Appointed.

No. 34. Act, sec. 22, Penalty for vend by Unlicensed Persons.

95. If, as the Board say, in consequence of the right which purchasers have of privately transferring or selling stamps purchased from a licensed vender, the indorsement

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indorsement by the vender affords very little security against forgery, it may be questionable whether the advantages of allowing the habitual sale of stamps only by licensed venders equal the disadvantages of that restriction. In England there was formerly no such restriction I believe, but I see that by a late Act persons have in England been restricted under a penalty of 20*l.* from selling stamps without a licence, such licence being only granted in the execution of a bond, under a penalty of 100*l.* conditionally to sell no stamp that has not been bought from the stamp office, or from a stamp distributor, or from the licensed vender. The object of this Act is stated to be the prevention of the sale of forged stamps. But the circumstances of India and those of England are very different; so also will be the stamp law of the two countries; for here purchasers of stamps in large quantities are to be allowed no discount; the only licensed venders here are paid servants of Government, and considering the responsibility incurred by a collector for every licensed vender under him, such venders must ever be very few, perhaps there may be at the utmost one in every pergunnah. If a collector were to insist upon venders giving the security of Government paper, which he has a right to do, there would probably be only one vender in the whole district. As it is, it is certainly no uncommon thing for a village to be 10 or 15 miles from a licensed vender. Is it expected that a man is to walk 30 miles for a one-anna stamp? Supposing it practicable effectually to enforce the restrictions of the law, which is more than I find anywhere asserted, is an intending purchaser really benefited by being rendered unable to get a one-anna stamp without walking 30 miles for it, though when he gets it, he is charged no more than one anna, instead of being allowed, in the natural course of things, to get it from the moodee next door, though perhaps the moodee might have charged him an anna and a quarter. The option might always be secured him by retaining the restriction as to price upon licensed venders. If he is not benefited, who is? Certainly not the revenue, for it is a thousand to one that it will lose the anna. The present plan is framed as if there were no doubt about our having a licensed vender in every village. In this it is of a piece with a great part of our Regulations which give up attainable every-day objects for the sake of having upon paper projects for attaining some more magnificent object, which we have not the means and never shall have the means of approaching. Too many of our boats are so grand that we cannot get them to the water.

3 & 4 Will. 4, cap. 97.

Or a licence might be given to numerous persons gratis, as in England, under a bond requiring no stamp, with a sufficient discount allowance. Under such a system there would be no chance of defalcation, and consequently no trouble and responsibility imposed upon collectors. Hence it would be no longer a collector's interest, as it now is, by reason of his being held responsible, and being allowed no commission, to restrict the sale of stamps within the narrowest possible limits. Under such a system I think the increased sale of stamps, owing to the increased facility of obtaining them, would much more than counterbalance a large discount. Perhaps it would not be necessary to allow any discount upon judicial stamps, and an officer of every court might be obliged to vend stamps.

96. There seem to have been two objects in view of the framers of our stamp laws: revenue without undue vexation to the people, as a primary object, and some security against forgery as a collateral and secondary object. By all accounts the latter object is missed, and seems in India unattainable to any material extent by stamp regulations; would it not be better to give up entirely this secondary object as far as the law goes, devoting a complete and efficient registration law solely to it, and by so doing to secure the primary object of this law more effectually than has ever yet been done?

97. At any rate, if the primary object is to be sacrificed to a certain extent, would it not be well to make the provisions which have in view the remaining object as effectual as possible without any further sacrifice. This might be done perhaps by adopting the Madras suggestions, (*see* No. 29) and by prohibiting absolutely the sale of any stamp by any person not a licensed vender, no matter how or why procured by him; allowing however a collector of stamps to receive back an unused stamp if satisfied that no fraud has been intended. This could be effectually done by allowing no stamp to be valid unless on an instrument to which the person for whom it was bought from a vender, as shown by the vender's indorsement, is a party. I doubt if anything short of this would be effectual.

98. The present law provides for the exchange of spoiled stamps. The draft proposed by the Law Commission leaves this to the "discretion" of the authorities. It is provided for by law in England, and though the Commissioners think to do so here would be inexpedient, they give no reason for that opinion. The Board do not say that the present law been felt to be inconvenient.

No. 35. Act, sec. 24, Fine on Stamps under Value.

99. On the penalty inflicted under this section, the Sudder Court at Calcutta observe, that it makes a man pay as much, including his original purchase, if he brings in a document on a stamp of too low a value by one rupee, as if he brings in a document on plain paper. Thus if the proper stamp be 100 rupees, and the stamp on the instrument be 90 rupees, the party will have to pay 910 rupees to render his document receivable in evidence. First and last then he will have paid 1,000 or tenfold duty, the same as if he had never taken out any stamp at all. The judges think the equitable penalty would be ten times the difference between the value of his stamp and the value of the stamp on which his document ought to have been executed.

No. 36. Act, sec. 25, Penalty for falsification.

100. The judges of the Sudder Court at Calcutta propose to add the words "in irons," after the words "hard labour," in this section; and to prevent the possibility of any misapprehension hereafter, they propose the specific repeal of such parts of Clause 3, Section 4, Regulation II. 1807, and Clauses 1 and 2, Section 10, Regulation XVII. of 1817, as relate to stamp papers. The first-mentioned clause defines forgery, specially including in that offence the illicit imitation of a stamp; and the last-mentioned clauses provide a punishment for uttering counterfeit stamps: as the maximum punishment by both provisions corresponds with that provided by this section of the draft, the necessity for repealing these clauses is not quite apparent. This section is of greater local extent than these existing Regulations, as it includes the jurisdiction of the Supreme Court; but in the Mofussil it will not clash with them; a prisoner may be indifferently tried under it or under the old Regulation cited. Besides, to repeal Clause 3, Section 4, Regulation II. of 1807, as regards stamps, would be almost to declare that counterfeiting a stamp is not forgery. If therefore it be determined that this Regulation, and no other, shall be applicable to matters relating to stamps, it might perhaps, instead of repealing the clauses abovementioned, as recommended, be better to provide that no person shall in future be punished under them for anything for which he can be punished under this Act.

No. 37. Act, sec. 29, Forging a Stamp to be considered as a Misdemeanor in the Supreme Court.

101. This section provides that persons convicted of counterfeiting, &c., stamps, if tried by the Supreme Court, shall be tried as for misdemeanors. I believe I am right in saying that the object of this provision was to give such persons the benefit of being heard in their defence by counsel.

No. 38. Act, Discount.

102. By the present Regulations, discount is allowed to purchasers of stamps to a certain amount. The Law Commission objecting to this, have intentionally omitted this provision. They observe, however, that the Executive Government will always have the power of introducing a rule to this effect if approved of (*see* remarks under Point No. 34).

No. 39. Act, Fine on Vakeels.

103. By the present Regulations a fine is imposed on vakeels or other individuals who present to a court documents on plain paper that ought to be stamped. The Law Commission considered this provision unnecessary, saying it is the business of the officers of courts and cutcherries to see that such documents are not received. The English law imposes a penalty* of this sort; perhaps to adopt here so much of it as imposes a penalty on officers of courts for receiving papers not properly stamped, might be advisable.

* See 56 Geo. 3, cap. 56, for Ireland. I believe there is a similar provision for Great Britain.

No. 40. Schedule (A.), head 1, Agreements in matters when value is not specified.

104. The order of Schedule (A.) is alphabetical. Agreements, and minutes of agreement, not otherwise specially provided for, are first entered. Three classes of such documents are given, with a particular stamp duty on each class. If this classification does not, as it is intended to do, exhaust the head, it is evident that some agreements will escape all duty.

105. The first class consists of agreements "relating to matters capable of valuation, and with the value stated." This excludes agreements for matters quite capable of valuation, wherein a specific consideration has been given, if the value of the thing agreed for is not specified. The rule about optional stamps in section 5 of this Act, referred to under the third class of agreements in this head of Schedule (A.) is intended to apply to all cases wherein no value or consideration is distinctly specified, both those in which the omission is voluntary, and those in which it is unavoidable, owing to the consideration not being a sum of money, and the value being indefinite or immeasurable. The provision in question makes recoverable under any stamped document for which the value of the stamp is left optional, no larger "sum" than the largest sum for which the stamp used would have been proper, if a specific value had been mentioned in the document. The

third

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third class under this head of agreements provides an optional stamp for agreements, "for the performance of any legal Act, or for a purpose not restricted to nor specifying any amount." Thus, classes first and third, certainly include all possible agreements. Therefore, it is sufficiently provided that every agreement must have some stamp. But is the value of the stamp sufficiently provided for in all cases? Suppose *A.* execute to *B.*, on a stamp of two annas, an agreement to convey an estate to *B.* whatever be the value of the estate, and whatever sum *B.* may have paid *A.* for it, the document in this stamp will be clearly receivable in all courts as evidence. Though the estate be worth a lac of rupees, and though that sum may have been paid for it, if *B.* sue *A.* for damages, he can recover no more by reason of that document than 25 rupees; so far all is safe. But I believe in certain cases a court of equity will decree specific performance. In such cases under this head, as now worded, by using a stamp of very small value might not the stamp law be safely evaded? This difficulty cannot arise in England, where the stamp on agreements is fixed with reference only to the number of words in the agreement, if only the value of the matter equals 20*l.* and where agreements whereof the value of the matter is immeasurable, require a stamp.* The present Calcutta Stamp Regulation is on the English principle.

* See Oxford *v.* Cole, 2 Start[n] 351, cited in Roscoe's Digest.

No. 41. Agreements for Periodical Payments.

106. The second class contains agreements for periodical payments, for which a rate of duty is specially provided. The words used are "for an annual payment, or any periodical payment, to be made at shorter periods than a year." This excludes agreements for periodical payments at periods longer than a year. There may be such perhaps under this law; it might be worth while for parties to agree to periods of a year and a day, instead of annual periods, for an annuity. Such an agreement would then fall under class third, and a stamp enough for the value of one payment (instead of ten) would be sufficient, under which every successive payment might be periodically prosecuted for during any length of time.

107. This objection, if it be one, would be avoided by substituting in the text for the words used, the words "for periodical payments." In the value column for the words, "the amount of 10 years payment," the words "the amount of payments for or in 10 years," might be substituted.

108. Under the present wording, agreements for payments at indefinite periods, would not be included in this class; such periods, for example, as at the close of every voyage. The alteration I have suggested would not fully remove this objection; perhaps a distinct class may be required for this sort of periodical payments, corresponding to head 9 relative to bonds; indeed I do not exactly see why all agreements should not at once be placed precisely on the footing of bonds of a like nature: it would certainly be the simpler, perhaps the safer arrangement. It seems intended to tax both classes of engagement equally, as being essentially identical in all but form, yet there are seven heads for bonds, some with subordinate classes, and there are only three classes, under one head, for agreements.

No. 42. *Id.* Kishbundies.

109. It seems necessary to add to the exemptions specified, agreements for instalments of rent (kishbundies), executed by actual cultivation, for land cultivated by them; as leases and counterpart leases to and from such parties are exempted, it is doubtless intended to exempt kishbundies, but I do not think they would fall under the exemption, or any other in the schedule as now drawn.

No. 43. Schedule, head 2, Assignments not being Original Conveyances.

110. The object of this head is, as is said, to include "reconveyances and transfers of mortgages of bonds, policies of insurance, &c." which the Board say are not provided for under the head of Conveyances. As drawn, this head would fix the duty, "where the assignment is of any interest secured by an original deed or instrument on a stamp of a value less than 8 rupees," at the same value as that of the stamp of the original deed or instrument. Mr. Prinsep, as I see by a pencil note, would prefer the bond rate under a value of 1,000 rupees. In other cases, the maximum stamp will be 8 rupees.

111. The words, "in other cases," seem a little ambiguous; they apparently include cases where the assignment is not in pursuance of any other original deed, though they may have been meant to include any cases where the assignment is in pursuance of another original deed, and where the value of the stamp on that original deed is 8 rupees or more.

 112. The

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112. The former interpretation would include the whole of the head of Conveyances, therefore I think that the meaning was probably according to the latter interpretation.

113. The intention of this head does not appear to me to be necessary or clearly developed; if it is intended that by "conveyance" be meant actual transfer, and by "assignment" is meant a mere formal transfer that conveys no new right, this might be more clearly expressed; as it is, if the reconveyance of mortgaged property back to the mortgagor upon his redeeming it, be not a "conveyance" under head 16, because it is a mere form, then I do not see how it can be an assignment under head 2, for both heads are equally bare of explanation regarding mere deeds of form: I suppose this formal consideration for the reconveyance is the redemption money.

114. Again, if by this head it is meant to include all conveyances not made for a consideration, which literally it does include, then it includes all deeds of gift; for which deeds a duty, the same as the duty for settlements, is elsewhere provided. A Mahomedan deed of gift is defined to be "the conferring of property without a consideration."

No. 44. Schedule (A.), head 5, Exemptions of Bills of Exchange.

115. The string of "Exceptions" under head 5, are doubtless intended to apply to the two preceding heads, 3 and 4, as well as to 5; but apparently they apply only to head 5. It would perhaps be conducive to clearness if the exemptions were placed immediately under head 3, and if under heads 4 and 5 were added,

"Exemptions:

"The same as those under the preceding head."

No. 45. *Id.* Verbal.

116. In the second exemption, I see the words "party other than the acceptor, and the payee of such bill." The payee may not always be the acceptor.

No. 46. *Id.* Exemption on Foreign Bills.

117. From the correspondence between the Board and the Law Commission, the meaning attached to the words "foreign bills," seems uncertain. By what the Board say has been the usual construction of these records, bills drawn upon or from Singapore, would be foreign bills. A note explanatory of the expression might be easily added.

118. Are bills drawn upon or from England, or any of Her Majesty's colonies, "foreign bills"? Is it intended to require a stamp on such bills? If the answers to both these questions be in the negative, an additional exemption will be necessary for bills of this description.

No. 47. *Id.* Exemption Agent.

119. This exemption saves from stamp tax, drafts on bankers or agents, under certain circumstances. The Board observe, that the similar wording of the existing Regulations has given rise to a question on what the meaning of the word agent is in Bengal; they suggest the substitution of the word "person," "or persons." The Law Commissioners admit that the term "agent" is vague, but they fear that the latter words would be too comprehensive, consequently they have left the words as they stood before; unless some case can be pointed out in which a draft upon a person which it is meant to tax might escape taxation, because the drawee could be proved not to be an agent, the objection of the Board will hardly seem to have been answered.

No. 48. Schedule (A.), after head 5, Verbal.

120. As this line now appears, bills of sale not having a head number, seem to be amongst the exemptions. Instead of the manner of entering them here adopted, the entry would perhaps be better thus, "For Bills of Sale, *see* Conveyances and Mortgages."

No. 49. Schedule (A.), head 10, Bonds for Indefinite Sums.

121. As this head is now worded, there seems a confusion between it and head 6, the head of bonds for the payment of money. For anything that appears to the contrary, the second class under this head is identical with the whole of head 6, both consisting of bonds for the payment of a definite sum of money; and if the bonds under this head are the same sort of bonds as the bonds under head 6, the second class under this head is a mere repetition.

122. On the other hand, if they are not the same sort of bonds; that is, if bonds under head 10 are not the bonds for the payment of money intended by head 6, then bonds for the payment of an indefinite sum of money of the sort intended by head 6, but for no definite sum, are altogether omitted in the schedule, and will escape all duty. It is also to be observed, that the first class of head 10 is apparently included under head 11. Thus, either the whole of head 10 must seem a nullity,

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nullity, or it must allude to bonds of some particular sort, though apparently treating of bonds generally. For these reasons, it seems probable that head 10 would necessarily be construed to mean some peculiar class of bonds; and from the words of head 10 being "bonds, when the amount of the money to be secured is not specified," it might easily be supposed to mean security bonds; if so, it should be so entered; but in that case, without a further addition under head 6, all other sorts of bonds for indefinite amounts will escape duty; so also will agreements of a like nature, as they follow bonds.

123. Whether by head 10 were meant security bonds only, I do not know. Schedule (A.) of Regulation X. of 1829, from which this Schedule was generally taken, has not in this instance been followed. That Schedule does not contain similar anomalies or obscurities to those here noticed. I am not aware of the motives which induced a departure from it in this instance.

124. It seems to me that the simplest method would be to include under head 6 all bonds which it is intended to tax at the rate fixed in that head, and I do not see that this might not be done by words somewhat to the following purpose:

"6. Bonds (tummussooks, moochulkas, feil zamnees), not otherwise specified in this Schedule.

"If the largest amount recoverable be specified in the bond (here will follow the scale).

"If the largest amount recoverable be not specified in the bond, an optional stamp, under section 5 of the Act."

No. 50. Schedule (A.), head 8, head 9. Bonds in security for the delivering of any valuable thing.

125. Heads 7, 10, and 11 would then be needless. It does not appear to me that bonds for the payment of an annuity for a fixed period are properly classed under head 8, under the head of Agreements. There is one class of Agreements for periodical payments, which includes annuities for definite as well as those for indefinite periods, and also includes periodical payments, which may not be annuities at all. But here bonds for annuities for definite periods are in one class, and bonds for all other annuities and all other periodical payments are in another class. It would seem that the classification ought to be the same in both instances, and I think that adopted for agreements is the simplest and the most fair. The consequence of classing bonds for annuities for definite periods under head 8, is to make a bond for such an annuity pay in many cases a much higher duty than an agreement for the same annuity would pay, whilst in no other case is any distinction made between the duty on bonds and that on agreements. An agreement to pay an annuity for 50 years would require only a stamp equal to what would be required if the agreement were for a sum of money equal to 10 yearly payments; but a bond for a similar annuity would require the stamp to be what would be required if the bond were for a sum of money equal to the value of the annuity, which may be equal to 20 yearly payments.

126. Moreover, no rule is provided for calculating the value of these annuities for definite periods, which, of course, depends upon the rate of interest that may be assumed.

127. If the omission here suggested were made in head 8, head 9 would require alteration. It might follow exactly the words of the second class of head 1, for agreements, as it has been proposed to alter them under Point 41.

No. 51, Schedule (A.), head 6. *Ad valorem* Scales.

128. The scales of *ad valorem* stamp duties are taken from Regulation X. of 1829, without alteration.

129. The gradual rise of duty in relation to the value is very different in the eight great scales belonging to this Schedule.

Head 3. Bills of Exchange.
„ 6. Bonds, &c.
„ 16. Conveyances, &c.
„ 25. Leases, &c.
„ 39. Receipts of Bankers, with interest stipulated.
Receipts of ditto without ditto.
Receipts conditional.
Receipts simple.

130. So also the scale of duty for the same class of instruments is very different by the Regulations of the different presidencies. The Madras Board of Revenue instance a document which, if of a low value, is charged four times higher in Bengal than in Madras; if of a certain higher value, it is charged equally in both; if of a still

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still higher value, it is charged less in Bengal than in Madras; and if it is of a very high value, the charge is again higher in Bengal than at Madras. Such being the case, it is impossible but that at least one of the two scales is very faulty.

131. There is, further, great comparative irregularity in the several scales of this same Schedule, each scale applying to a distinct class of documents, which appears nowhere accounted for. I do not mean in the general amount of the tax, for in that it is manifestly proper that there should be much difference; but I mean in the ratio of the increase of duty upon a given increase of value. The scale for bonds proceeds by a very different ratio from that for bills of exchange: a bond for 100 rupees pays 8 annas duty, *i. e.* 5 in 1,000; a bond for 100,000 rupees pays 80 rupees, *i. e.* eight-tenths in 1,000, or something less than one-sixth of the proportion paid by a bond for 100 rupees. But a bill at three months for 100 rupees, pays 8 annas or 5 annas in 1,000, the same as a bond for the same sum; such a bill for 100,000 rupees pays 20 rupees, *i.e.*, two-tenths in 1,000, less than one twenty-fifth of the proportion paid by a bill for 100 rupees, and only one-fourth of the proportion charged on a bond for 100,000 rupees, *i. e.* a bond of the same value. Yet it would seem that whatever reasons exist for taxing bills less than bonds, must apply equally to small as to large sums. A comparison between any two of the scales will show similar apparent anomalies. Even the scale for bills at short dates and that for bills at long dates proceed in ratios quite different: a bill at short date, if for a small sum, pays only half of what is paid by a bill at long date for the same sum; but a bill of short date for a large sum pays from three-fourths to four-fifths of what a bill at long date for the same sum pays. A similar observation applies to the two scales of rates for short and long leases, and to the four scales for the four sorts of receipts. In general the proportional rate decreases as the value increases; but in the scale for conveyances, at 200,000 rupees the rate is three-fourths in 1,000; above that sum, taking the highest limit of each grade, the rate continues constantly on the rise, approximating indefinitely towards 1 in 1,000, as the value increases.

132. Although an examination of these scales by one ignorant of any clue to them, will give him the belief that this complicated system is the result of chance; yet it must be presumed that this is not the case, and that each scale is based upon some principle: where, however, the gradations of the scales are so various, there must be as many principles as scales, or at least if there be some one more general principle applied to all, it must be greatly modified in each case by a principle peculiar to that case. The examination of the scales is strictly a duty of detail, but it is one requiring a constant reference to principle. The principles acted on are hidden from me. It is needless for one altogether ignorant of them to attempt to enter into an examination of the scales. The rule most generally followed (though there is an exception) seems to be to tax great transactions much more highly than small transactions: thus a rich zeemeendar who borrows a lac of rupees by pledging an estate, is taxed only one anna three pice, $\frac{3}{100}$ per cent., whilst a poor shopkeeper who borrows 100 rupees by pledging his goods, is taxed eight annas per cent. I may mention that this apparent anomaly will be greatly increased if the Honourable Mr. Ross's proposition of exempting all instruments for less than 100 rupees be adopted. It would seem that all the arguments for that measure are opposed to fixing a higher tax on small transactions than on large. It will look odd if a transaction in a matter of the value of 99 rupees is entirely exempted from tax, because that sum is too small to be taxed at all, and one where the value is 100 rupees is taxed more than all other transactions, because it is the very smallest transaction that is taxed at all. Without perceiving even the principle on which this general rule is founded, it would be hopeless to attempt to discover the more intricate principles according to which it is differently applied in the case of every different class of instruments.

133. I can therefore do no more than point attention to the facts.

134. I may mention that the Law Commission avowedly abstained from making any change in the rates of duty. These are taken bodily from the existing Regulations. These Regulations were framed with a general reference to some British Stamp Act lately passed; and I believe that is all anybody here knows on the subject of these scales.

135. As

No. 52. Schedule (A.), head 13, River Craft.

135. As worded, this head does not very definitely point to river craft, and yet, by a large construction, it would include them. What the intention is I do not know.

No. 53. Schedule (A.), head 16, Conveyances wherein no precise consideration is specified.

136. This head includes, under the name of "Conveyances," all transfers of property for a consideration; but it is not provided that where property is transferred for a consideration, the consideration for which it is transferred, shall be precisely and truly specified in the conveyance: yet no stamp duty is required, except where some "purchase or consideration money" is expressed in the conveyance. This certainly must be an oversight. As the draft stands, if no consideration be specified (and it is not necessary to specify any), a conveyance upon sale will require no stamp at all; or if a nominal consideration be specified, a stamp of one anna would suffice for any property or estate; and the purchaser would be safe if he took a receipt for the full purchase-money on a separate paper with a four rupees stamp.

137. The draft in this respect has followed precisely the existing Mofussil and Calcutta Regulations, and Ramchunder Ghosaul, speaking of Calcutta, says that "Attornies sometimes evade the *ad valorem* duty by simply having the words 'full value of the property' written in place of the consideration." The Law Commissioners have made no observation on this circumstance.

138. It would seem that in this place some special rule to enforce the insertion of the true amount of consideration in every conveyance for a consideration is indispensably necessary; I believe there is a rule of that sort in the English stamp laws.

139. The optional rule cannot be adopted for conveyances; an estate, or any other individual thing, must either be conveyed or not conveyed: nor will it do to go to the value of the property conveyed, and to say that unless the stamp be sufficient for the whole value, the conveyance shall be useless. It is next to impossible to say what the value of any estate is now; it will be quite impossible 20 years hence to say what its value is now. It would only be in a very extreme case that any court would feel sufficiently sure of the value to enforce such a law.

No. 54. *Id.* where consideration is not money.

140. Ramchunder Ghosaul remarks that much difficulty will arise in fixing the proper stamp duty where the consideration is "an annuity on government securities, or bank shares, or mortgage judgment," &c., unless some rules be specially provided for such cases. As the draft stands, I believe no stamp would be requisite in such cases, even if the consideration were fully specified in the conveyance; but as the draft cannot remain unamended in this point, Ramchunder's remark must be borne in mind when considering the best way of making the necessary amendments.

No. 55. *Id.* Duty on Conveyances.

141. The scale of duty for the first lac is one in 1,000; for the third and every additional lac it is the same; but for the second lac it is only one-half in 1,000. This may be an oversight, though the corresponding scale in both the existing Schedules is in this respect precisely the same as that of this draft. The anomaly would be removed by adding under the last entry in the second column of figures, which is now 100,000, an entry of 150,000.

No. 56. *Id.* Exemption of Bank Shares.

142. Transfers of bank "shares" are exempted from stamp duty. Does this mean only Bank of Bengal shares, or all bank shares? On the first supposition, why, in addition to a practical monopoly for the issue of bank notes, should the bank in question have this peculiar indulgence? In the alternative, why should banks enjoy a peculiar privilege not given to any other company?

No. 57. *Id.* Transfers by indorsement.

143. Ramchunder Ghosaul observes, that "transfers of bills of exchange, promissory notes, and the like, should be distinctly exempted under conveyances." He means doubtless all transfers where the property is transferred by indorsement, but I should think a distinct exemption unnecessary for such cases. "An indorsement can hardly be called an instrument for the transfer of property, or of a right in property." It is rather a mode of transferring the thing indorsed, as delivery

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delivery is a mode of transferring a bank note. However, if doubts are likely to arise on this point, a note to the exemption would be an easy way of obviating them.

No. 58. Schedule (A.), head 17, Deeds or Instruments.

144. This head stands thus, "Co-partnership, deeds of." The Board proposed to add after "deeds" the words "or instruments." The Law Commission think this addition unnecessary, but unobjectionable. It is, however, perhaps necessary, in order to include agreements of co-partnership not under seal, if there are any such, otherwise such agreements would fall under head 1. "Agreements" might be the word used instead of "instruments," according to a suggestion of Mr. Prinsep.

No. 59. Schedule (A.), head 19, Copies of Instruments.

145. Is not this provision likely to open a door to evasion of the duty? A. executes on plain paper a deed in favour of B.; C., who is no party to the deed, nor interested therein, gets an attested copy thereof on an eight anna stamp. I conclude that this copy would be admissible in evidence in all cases for anything in this Act contained. Then C. has only to transfer the copy to B., who when the matter of the instrument is questioned in court, has only got to destroy the original deed and produce his copy. If it be resolved to tax doubly a deed executed in duplicate, and so forth, this manœuvre may be adopted for evading that provision with still greater certainty of success by using one original deed on stamped paper, and taking through third parties as many copies on eight anna stamps as may be required, which copies may afterwards be attested as true copies by the signatures of the parties to the deed. There is no stamp duty on an attestation.

146. Perhaps this objection might be avoided by providing that no such copy as is here described shall be producible in evidence on the part of any party who was immediately interested in the original deed at the time of its execution, or on the part of any party claiming through any such party.

No. 60. Schedule (A.), head 20, Copies of attached Deeds.

147. If it be right not to allow a party to a single deed to produce in evidence a copy of that deed unless it be on a stamp of the value of the original deed, why should a party to a batch of deeds be allowed to produce in evidence a copy of any deed annexed to one deed of the batch on an eight anna stamp, instead of a stamp of the value of the deed of which he takes a copy.

No. 61. Schedule (A.), head 21, Exemption, Copies made for private use.

148. Copies made for private use only are specially exempted. The Board proposed to omit that special exemption as unnecessary, because nobody can prevent a person from taking copies of his own papers. The Law Commission, admitting that for the most part this exemption "may not be indispensably necessary," observed that they were not quite satisfied that the law would always be so construed if no special provision were made for it. It is, however, to be remembered that by the proposed law, not to use a stamp where a stamp is required, is no longer penal; so that it is not easy to imagine a case in which this exemption would be necessary, and I fear that the retention of it may have an effect not contemplated by the Law Commissioners. Will it not admit the production in evidence of unstamped copies originally "made for private use only," but which afterwards may be wanted for production in court, and that even when originally taken with a view to such a contingency? Unless such an interpretation were put upon this clause it would be absolutely without meaning.

No. 62. *Id.* Application of Exemptions.

149. Do these exemptions apply only to this head (21), or do they also apply to the two preceding heads? If necessary for one, they seem necessary for all. When what shall be the application of the exemptions is determined, it may be well to make the law clearer, by an alteration something like that proposed under Point No. 44.

No. 63. Schedule (A.), after head 23, Verbal.

150. A numbered heading is wanted between the heads marked 23 and 24. This will change all subsequent numbers.

No. 64. Schedule (A.), head 28, Exemption: the extent of the Exemptions.

151. To how many heads do the exemptions under head 28 extend? particularly are they meant to extend to head 24? That they extend to more than one head is evident, as they include instruments not included in head 28. *See* the proposal under Point No. 44.

No. 65. Schedule (A.), head 29, Verbal.

152. For the sake of clearness it might be well perhaps to add after the words "Matcharnamahs," &c., the words "not being of the sorts provided for in Schedule (B.) under the head thereof." The note and reference to Schedule (B.) at the end of this head is intended as an exception to the body of the head, but it is not specifically said to be an exception.

153. Is

No. 66.
Id. Warrants of Attorney.

153. Is it the intention to require a stamp on warrants of attorney to sue to enter up judgment, or to take any other step in the Supreme Court? or is it the intention to exempt such instruments, as judicial proceedings in that court are generally exempted? As the head now stands, I think these warrants of attorney will require a stamp; for the first part of the head seems to include them, and the last part certainly does not exempt them.

No. 67.
Schedule (A.), head 33, Verbal.

154. The two last classes under head 33 are intended in effect to be exemptions to heads 31 and 32, as well as to head 33. But without some reference under heads 31 and 32 to these exemptions will their effect be clear? Are they or are they not meant to be exemptions to the succeeding head 34?

No. 68.
Id. Class 4, Limitation of Duty on Mortgages in collateral security.

155. Perhaps it might be safer to apply the limitation of the stamp duty to eight rupees, where a mortgage is in security for money taken under bond, &c. Only two cases in which the original deed has been executed on stamped paper of the proper value.

No. 69.
Schedule (A.), Partitions, head 35.

156. The duty on partition deeds being limited (consequently light) where the estate is valuable, and being *ad valorem* (consequently heavy) where the estate is of moderate value, operates as a discouragement to the partition of moderate estates; also from its being increased in direct proportion to the number of parceners, it operates as a discouragement to the partition of estates in which the parceners are numerous. The duty may not be very great, and so the effect may not be very perceptible; but upon principle, is either discouragement consistent with sound policy? Is the double discouragement consistent with sound policy?

No. 70.
Id. Verbal.

157. To the words "when the sharer's portion does not exceed 800 rupees," the words "in value" might perhaps be added.

No. 71.
Schedule (A.), head 36, Life Insurance in Laudable Societies.

158. Ramchunder Ghosaul correctly remarked in his paper that no stamp duty was now required on insurance, where the sum insured was uncertain, such as in the Calcutta Laudable Society. This is a mutual insurance society, formed for a term of years, in which all the payments are to the end of the term divided amongst the assignees of the deceased members. No provision for such insurances has been made in this draft, but one seems indispensably necessary. The subscribers to a mutual insurance society are undoubtedly parties in a company, and so any deed they sign will require the stamp paper for partnership deeds. But that is only a fixed stamp of eight rupees for the whole society. To require no other stamp would be manifestly to allow those who insure in mutual assurance societies to evade the *ad valorem* duty which it is intended to make all insurers pay.

159. Besides such societies as those above mentioned, wherein the only partners are the insurers, there are others in which every insurer has a share in the profit; the remainder of the profit and the chance of loss remaining with the original partners in such societies as well as in those above mentioned, every insurer is in reality a partner, and so I believe he would in law be reckoned; bankruptcy should raise the question, and in such societies the amount insured for is so far indefinite that it may be indefinitely raised from time to time, if the insurer prefer raising the sum he has insured to lowering his premium.

160. Both these cases present difficulties, and the only way I can think of assessing the duty fairly on them, and in the case of common assurance offices too, is to fix the stamp duty with reference to the premium, instead of the sum insured. This would be following the course adopted with sea insurances. To prevent evasion it would be necessary to fix the duty upon the yearly rate of the greatest premium stipulated for.

No. 72.
Schedule (A.), head 37, Sea Insurances.

161. Here are two grades or rates of duty in insurances of sea or river risks: First, where the insurance rate is two per cent. or under; second, where it is above two per cent. In England, Mr. Prinsep observes, by 3 & 4 Will. 4, c. 23, there are three grades for insurances made by the voyage, dependent on the insurance rate, and two grades for insurances made by time, dependent on the time insured; for Mr. Prinsep suggests the possible expediency of introducing a third grade of policies here, for rates of and below one per cent. and a rule for time insurances. The

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The following are the English rates alluded to by Mr. Prinsep :—

1. Where the insurance is on the voyage, and the insurance rate is 15 *s.* per cent. or under, the duty is 1 *s.* 3 *d.* on the first 100 *l.*, and 1 *s.* on every other 100 *l.*

2. Where the rate is 30 *s.* or under, the duty is 2 *s.* 6 *d.* per 100 *l.*

3. Where the rate is above 30 *s.*, the duty is 5 *s.* per 100 *l.*

4. Where the insurance is for time, the duty is 2 *s.* 6 *d.* when the time does not exceed three months, and 5 *s.* where it does.

It must, however, be noticed, that the three first-mentioned rates of duty on insurances made for the voyage, apply only to the case of foreign voyages. I suppose for home voyages, the old rates of duty under 55 Geo. 3, c. 184, still apply, viz. :—

1. Where the insurance rate does not exceed 20 *s.* the duty is 1 *s.* 3 *d.* per 100 *l.*
2. Where the insurance rate exceeds 20 *s.* the duty is 2 *s.* 6 *d.* per 100 *l.*

No. 73. Schedule (A.) head 40, Bengal Bank Exemption. Schedule (A.), head 41 ; Exemption.

162. Receipts for payment, on account of shares in the Bank of Bengal are specially exempted from duty ; I do not know on what principle. (*See* Point 56.)

No. 74. Deeds of Partition or Security, in pursuance of previous Deeds.

163. Deeds merely declaratory of trust, pursuant to any previous deed, &c. are specially exempted ; but no other deeds, though merely pursuant to a previous deed, &c. are so. Ramchunder Ghosaul, in his list or paper given in to the Board, had observed, that the following deeds ought to be distinctly exempted under this head.

" Deeds of appointment or apportionment in execution of powers given by previous settlement, will, &c. in favour of persons named," and

" Deeds for securing gifts or dispositions made by previous wills, &c."

164. I do not find that Ramchunder Ghosaul's suggestion has been remarked upon by the Law Commission, and it certainly has not been adopted, yet it seems worthy of consideration, as the previous deed either pays the full *ad valorem* stamp duty, or is exempted upon principle ; it seems but fair to exempt all subsequent deeds made merely pursuant to that previous deed, else an indefinite number of *ad valorem* duties may be levied on one settlement. For example, if a man, in his marriage settlement, settles a lac of rupees on any children he may have, reserving the right of apportioning the money amongst them as he may see fit at any time, this settlement deed pays full duty for the whole lac ; but if this exemption be not enlarged, it will virtually pay double duty, once at the settlement, and again at the apportionment, which after all is but the consummation of the settlement.

No. 75. *Idem.* Verbal.

165. Instead of the words, " wills, testaments, and the like," perhaps some such words as " testaments, or writings in the nature of a testament," may advantageously be substituted. I do not know that there is any difference between " will" and a " testament."

Schedule (A.) Note to General Exemption. No. 76. Deeds given by officers of Supreme Court, as such.

166. Instruments whereby any settlement of any property is made require a stamp ; but instruments of that nature, in which any public body or officer, as such, is a party, are exempted. From this exemption, however, instruments executed by or to the Court of Wards or local agents, and sales for arrears of revenue or rent, or in satisfaction of decrees or orders of court, are excepted. The Law Commissioners suggest the propriety of adding to this exception from the exemption, transactions of officers of the Supreme Court employed in the administration of estates ; I observe, from a pencil note, that Mr. Prinsep considers this additional exception necessary.

(Schedule (A.) General Rate. No. 77. Copies.

167. Each sheet of a copy must be stamped ; consequently, as far as copies are concerned, the law which allows the executive government to prescribe the size of the sheet, allows it, in fact, to prescribe the rate of the duty.

168. The eight anna stamp falls heavily on copies of English documents, from the straggling nature of the character. The common stamp paper is very ill adapted

adapted for English writing; yet, I believe, there is no stamped foolscap here, as at home. I know there is none in the mofussil.

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169. The Board observe that there are several instruments used, principally instruments peculiar to English law, which are not provided for by Schedule (A.); a list of several such writings is with the papers prepared by Ramchunder Ghosaul, a native officer in the stamp-office. The Board instance as specimens of deeds omitted, dissolutions of copartnership and declarations or revocations of use or trust of or concerning property; and as specimens of instruments of other sorts omitted, they instance notarial acts and warrants of attorney*. Deeds not particularized are classified by this schedule with agreements, and the Board think that the classes of instruments above noticed do not fall under the schedule, "because the duty on deeds is a rateable one"; the stamp required for agreements having "reference to the amount above." They observe that by the present Calcutta Stamp Regulations, many of these papers fall under the heads of "Agreements," and "Deeds not otherwise particularized," because the stamp duty under these heads by that Regulation is a fixed one, viz., 8 rupees†. It is only in the Mofussil Regulations, which have been followed in this draft, that the duty under these heads is rateable.

Schedule (A.) No. 73. Commissions, and effect of Optional Rule.

170. I doubt whether the Board are right in saying that all the instruments to which they allude are excluded from the operation of the head for Agreements 1, because the duty under that head is rateable; where an amount is specified in the agreement the duty is rateable, but where none is specified in the agreement, the duty is optional; the only rule being that no larger sum can be recovered under such an instrument than would have been covered by the stamp used had that sum been specified. It seems to me, that if any deed of any sort, or any agreement of any sort, is really excluded from the schedule for the reason assigned by the Board, namely, because the duty upon deeds and agreements is rateable, then every deed and every agreement of all sorts, wherein no amount is specified, must be excluded for the same reason; because that reason applies no more to one class of deeds or agreements than to another, and such a general exclusion would plainly be contrary to the express words of section 5 of the Act, and of head 1, of Schedule (A).

171. I have ventured to doubt whether the head of Agreements by this Schedule, as now framed, is too exclusive, as the Board think it is, by reason of its *ad valorem* rate. I feel a doubt, on the other hand, that for that very reason it may operate too severely in some cases of instruments not particularized, which, as I interpret the draft, would require an optional stamp. An agreement on an optional stamp has this peculiarity, that it cannot be said to be either a valid or an invalid instrument; it will be valid in certain actions, in others it will be valid only to a certain extent. Where the instrument is the record of an original transaction, this may be attended with little inconvenience, because, when produced, it can hardly be with any purpose other than to obtain justice upon that transaction. But agreements upon smaller matters, secondary to some great original transaction, may be required to be produced either in their own little matters or in the great original matter. It is in such agreements that an optional stamp seems to me unsuitable and liable to create great difficulties in practice, and cause great injustice: where the agreement is the substance of the matter, there an optional stamp duty is equitable; but where it is not, a second exaction of the same duty as the duty on the fundamental transaction would seem very inequitable. There may be a great many such subsidiary or subsequent agreements, all relating to one great matter. In that case the repeated exaction of the original duty would be quite oppressive; and I think this Schedule, as now framed, would require full duty upon every one of such subsidiary agreements, excepting only those few which

* Warrants of attorney are, I should have thought, provided for by head 29, as "Letters or powers of attorney, or commission, or factory, or in the nature thereof."

† This is not precisely the case with regard to agreements. By the Schedule of Regulation XII. of 1826, agreements are charged with a stamp duty only where they are "concerning any matter or thing of the value of 500 rupees or upwards;" as regards agreements, therefore, the Calcutta Regulation having but one class, and that with a distinct reference to the value, seems to exclude more than the present draft, not less, as the Board assume.

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which are specially exempted, such as arbitration bonds, and those few which are charged with a fixed duty. The following are the only agreements of the latter species; viz., bonds and mortgages in collateral security, deeds of copartnership, charter-parties, composition deeds, deeds of exchange of land, letters, &c. of attorney, letters of license, and partition deeds. Even where the secondary agreement concerns no part of the original transaction, the same objection may apply. An example will show my meaning: Suppose A. to take B. into partnership, giving him an agreement on the proper stamp to pay him a certain large sum of money if he dissolve the partnership within a limited time. A. insists upon a dissolution of partnership within the time; a dissolution is accordingly agreed on and executed, and a writing to that effect is attested. If this writing come under the head of Agreements* (and I conclude that it certainly will), it must bear an optional stamp, and in order to enable B. to sue A. for the sum agreed on, the stamp on the dissolution must bear the same duty as that on the agreement, which is the substance of the suit. Thus whilst the stamp in a partnership never exceeds eight rupees, that on the dissolution of the same may be 10, 20, or any number of times that sum. I think, as the draft stands, the stamp must be the same as that on the agreement, because B. claims "by reason of" the actual dissolution as much as "by reason of" the agreement not to dissolve; he may often be obliged to put both instruments in evidence, and he cannot recover any sum "by reason of" the deed of dissolution, larger than the sum for which the stamp upon that deed would suffice if specified in a bond; *i. e.* the same as the stamp on the agreement. Hence this transaction is taxed doubly. Cases must often occur in which there are several subsidiary agreements founded upon or connected with one original agreement, which is the substance of the whole matter.

172. I do not know whether a general head could be prepared to include, at a fixed duty, all sorts of subsidiary deeds, such as I allude to; such a head would be a great inconvenience. But if this be impossible, it may still, as recommended by the Board, seem advisable to specify by name as many of such deeds and agreements as are in use.

173. Besides the conveyances noticed under Point 53, Ramchunder's list contains the following seven sorts of deeds, of each of which he says, "If not specially provided, this would fall under Deeds;" whereby difficulty will arise in apportioning the duty, deeds being now charged with rateable "duty." The specifications are in the words of the list:

"Appointment, in execution of a power, of land, &c., or of any use or interest therein, such as, for instance, the nomination of new trustees."

"Declaration of use or trust of or concerning an estate."

"Dissolution of copartnership, deed or instrument of."

"Procuration, deed or instrument of."

"Release or discharge of lands, &c. given to an executor or administrator."

"Revocation of use or trust of or concerning an estate, &c., or of any power previously granted."

"Surrender of term or of uncertain interest in lands."

174. There are probably many other sorts of deeds in the same predicament with the seven sorts above mentioned. According to my understanding of the draft as it now stands, these deeds will not escape duty, but will require an optional stamp; yet every one of them seems a very improper subject for an optional stamp, and a proper subject for a stamp of a fixed value. Would it not be monstrous that a trustee should be unable to recover from a bond debtor to the estate in trust the whole of a large debt due, because the stamp upon the deed nominating the trustee is not so great as the stamp on the bond?

175. Ramchunder's list contains writings which he considers to be omitted from Schedule (A.) as not being deeds.

Notarial

* If it be a deed, it clearly comes under head 22, and requires the same stamp as an agreement.

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Notarial acts.

Warrants of attorney to enter up judgment.

As to the former class, it is now a matter for the consideration of Government whether to include it especially or not. As to the latter class, I beg to refer to what is said under point 66 on head 29 of this Schedule.

176. The Board, it must be observed, suggested the specification of other writings only with a view to revenue and to a systematic and equal taxation. The Law Commissioners have not taken that suggestion into consideration only because "their object has been rather to improve than to extend the existing schedule." They observe on this point as follows: "How far it may be necessary to adopt the suggestion of the Board, either for the purpose of effecting that object" (improvement) "in a high degree, or with a view to the extension of the stamp-tax, it will rest with the Government to determine."

No. 79.
Collateral Deeds, and Deeds merely formal.

177. Collateral bonds are provided for at a fixed, and consequently a low rate, only when they are in further security under some conveyance, bond, or agreement. Collateral deeds of conveyance for a consideration and of mortgage, are provided for; but collateral deeds are not provided for in cases of gift, dower, or settlement except only when they are merely declaratory of trust, pursuant to a previous settlement deed, or will; nor are collateral deeds in partitions provided for.

178. Under the head of Leases, there is no provision for any collateral deeds, Indeed, the counterpart is expressly charged the same as the lease. I do not know how the common cases of lease and release are provided for; for anything I can see to the contrary, if a man were to give a rentcharge on his estate, by lease and release, he would have to pay double duty on the value of the estate, instead of what it would seem equitable to make him pay, viz., a single duty on the principal deed creating the rentcharge, as for a bond, with a small fixed duty on each collateral deed whereby that charge is secured. But I think it probable that this difficulty is felt by me only because of my ignorance of something which bears upon these nice points, for I see the Schedule of the Calcutta Regulation is the same, except as to counterparts, which are charged with a fixed duty; yet I venture to point attention to this matter, believing that thereby I can do no harm.

179. Ramchunder Ghosaul in his paper suggested the expediency of making "a provision for charging severally two or more matters separately engrossed on one sheet of paper or other material, or blended in one deed, such as lease and release, or conveyance and indemnity." He adds, that such a provision "is particularly essential in checking the practice of attornies and others, of blending two or more deeds in one." I conclude that this suggestion is the result of experience.

180. I am inclined to think that in theory the draft, as it stands, requires two stamps, or one stamp of the value of two on one paper, if on that paper two distinct instruments, each requiring a stamp, are engrossed, even though they should be blended together; but practically I think one stamp would always be enough, unless it were necessary to rely on both instruments in one case. I do not see that a man might not safely take any number of receipts from different individuals on one stamped paper sufficient for the one individual's receipt of highest amount. Some rule of the nature suggested seems desirable; yet there are many cases in which it is a matter of great convenience to have more than one instrument on one paper. This appears a point of some little difficulty.

Schedule (B.), head 1.
No. 81.
Security Bonds, &c., by order of Supreme Court.

181. The way in which bail bonds, security bonds, recognizances, &c. executed by order of the Supreme Court, are exempted from duty is somewhat remarkable. Schedule (A.) refers to Schedule (B.) for bonds executed by order of any court. Schedule (B.) puts a stamp duty on such bonds equal to that on petitions to the Court which orders them to be executed. There is no stamp duty on petitions to the Supreme Court.

182. Mr. Prinsep suggests for consideration whether it may not be proper to require a stamp upon such instruments when executed by order of the Supreme Court. As the draft stands, a stamp will be requisite for such instruments when executed by order of a magistrate of Calcutta.

 183. In

Schedule (B.) head 1. No. 82. Verbal.

183. In the exception after the word "prosecutors," the Judges of the Lower Sudder propose to add the word "defendants." This seems quite necessary.

Schedule (B.), head 2. No. 83. Copies of Decrees of Registers, &c.

184. The Board remarked, that the Registers' Courts and Courts of Appeal have been abolished; but, as the Law Commissioners observe, copies of decrees that have been passed in those courts may still be required. The Judges of the Upper Sudder have since made the same remark, observing that, under section 1 of the Act, copies of decrees passed by these courts will still be required to be written on the same stamp as heretofore. The Court doubtless allude to the words which retain the old Regulation in force "as regards matters which may have taken place" before this new Act passes. But I should certainly have thought that the taking out of the new copy was the "matter" in question, not the giving up of the old decree.

Idem. No. 84. Copies written on one side.

185. The Judges of the Lower Sudder think that the rule requiring copies under this head to be written on one side only, ought to be made generally applicable to all stamped papers.

Schedule (B.), head 3. No. 85. Exemptions of some copies.

186. The Judges of the Upper Sudder observe, that under an order of Government, at present, "copies of deeds and other exhibits and papers, not being proceedings, accounts, statements, or the like, provided for by No. 3, Schedule (B.), Regulation X. of 1829, when made for record in the Courts, in lieu of originals returned to the parties," may be written on plain paper. If such a distinction is meant to be retained, the Court suggest that a distinct rule should be laid down under this head, "clearly defining the description of papers to be exempted from the operation of it."

Schedule (B.), head 5. No. 86. Exhibits in Special Appeals.

187. The Judges of the Lower Sudder recommended that after the words "regular suit," be added the words "or any application for a special appeal, or for a review of judgment." The Judges of the Upper Sudder make a similar recommendation.

Idem. No. 87. Definition of an Exhibit.

188. The Judges of the Upper Sudder recommend that a provision be added, defining "what is to be considered as a single exhibit, particularly as regards puttwarries' papers, account-books kept by merchants, shopkeepers and others, and such like, which are not unfrequently contained in several volumes, and extend over a long series of years."

Schedule (B.), head 7. No. 88. Petition to Calcutta Magistrates.

189. As now drawn, this head will make stamps requisite on petitions to a magistrate of Calcutta. Mr. Shakespear, in his minute, observed, that he would specially exempt such petitions.

Idem. No. 89. Petitions to certain Officers.

190. The Judges of the Lower Sudder propose to add collectors of stamps to the list of officers in this head. Ought not assistants to magistrates, joint magistrates, or collectors to be added? Ought not sub-collectors and deputy-collectors to be added?

Idem. No. 90. Petitions of Prisoners.

191. The Board recommended, and the Judges of the Lower Sudder have since made the same recommendations, that an addition should be made to the second exemption under head 7, restricting the petitions therein mentioned to such as regard the imprisonment or the case of the party petitioning. The words to be added may be as follows: "Relating to matters connected with their treatment in gaol, or the case for which they are under restraint." The Law Commissioners approve of this suggestion.

192. Might not the words "in duress or" be omitted with advantage?

Idem. No. 91. Petitions from Molunghees.

193. The Board propose, that to the exemptions under this head another be added, to the following effect:—

"Petitions to the Board of Customs, Salt and Opium, from molunghees and from ryots engaged in the cultivation of the poppy on account of Government, only in matters connected with the manufacture of salt or with the cultivation of the poppy on account of Government, or with their claims for payment, or for protection against extortion on the part of officers of the salt and opium departments."

The

No. 7.
On Stamps.

The Law Commission approve of this addition.

Schedule (B.), head 9.
No. 92.
Verbal.

194. The Board propose that the first part of this head should run thus:—

"Plaint, petition of, in regular criminal suits, and in regular and special appeals, instituted, &c."

The Law Commissioners concur in this suggestion.

Schedule (B.), head 9.
No. 93.
Fractions of undivided Estates.

195. The Judges of the Lower Sudder observe, that there have been doubts and differences of opinion as to the mode of calculating the institution fees in suits for fractional shares of undivided estates, under the clause of the existing schedule which corresponds with this, and which is worded in the same manner. To obviate these, they propose that a sentence be added to the first clause of the note "to the effect, that in suits for fractional portions of undivided estates paying revenue to Government, the value shall be assumed at three times the amount of the proportional jumma which the fractional portion may bear with reference to the jumma of the whole estate."

Idem.
No. 94.
Fractions of jumma incapable of valuation.

196. On the last clause of the note to head 9, with reference to the words "as well as for any interest in malgoozaree land, not capable of valuation under the above rule," the Judges of the Lower Sudder remark as follows:

"They (the Judges) have frequently had occasion to observe the hardship of requiring persons suing for any interest in malgoozaree lands, not capable of valuation under the first rule of the note, to estimate its value at the selling price. They suggest that, in cases where the portion of malgoozaree land sued for bears a jumma capable of specification, the suit should be laid, as at present, at three times the amount of the annual jumma; but in cases in which the jumma cannot be specified, the institution fee should be calculated at the rate of the estimated mesne profits for two years."

197. It is to be remarked that the very favourable method by which land is valued for the purposes of the stamp tax, has a tendency to encourage real actions and to discourage personal actions, the object of which it is not easy to understand.

198. It may also be remarked in passing, that though the stamp on plaints may keep many cases out of court, it increases the difficulty of some cases about land that enter court. For there are often two cases in one; first, the rights of the parties are to be decided; and, secondly, the precise value of the thing to which one of them has a right is to be decided.

Schedule (B.), heads 8 & 10.
No. 95.
Verbal.

199. The Board propose, and the Law Commission concur in the proposition, that the first part of head 10 run thus:

"Plaint, petition of."

They propose a similar alteration in head 8, whereby it will run:

"Plaint, petition of, in summary claims."

Idem.
No. 96.
Appeals in Summary Suits.

200. On head 10 the Register of the Upper Sudder, by direction of the Judges, observes as follows:

"It has been ruled by the Court, with the sanction of Government, communicated in Mr. Secretary Macsween's letter to the address of the Register to the Calcutta Court of Sudder Dewanny Adawlut, No. 1790, dated the 29th September 1834, that in appeals from decisions passed in cases originally instituted on stamp paper of one fourth the prescribed value, under the provisions of section 8, Regution VIII. of 1831, the full amount of stamp should be levied, the provisions of the section in question applying only to the original suit. The Court beg to suggest that a note to that effect be added to the article under consideration. I am desired to state that the construction above quoted was circulated for the information and guidance of the zillah and city judges on the 12th December 1834."

Schedule (B.), head 11.
No. 97.

201. The Judges of the Lower Sudder remark that no changes have been made in the stamps on pleadings, in consequence of the enlarged powers lately given to principal

No. 7. On Stamps.

cipal sudder ameens; the Judges of the Upper Sudder make the same remark, and propose that some change be made in the rate of stamp under this head, where the case made over to a principal sudder ameen exceeds in value 1,000 sicca rupees.

202. I do not quite see why the stamp on pleadings might not be regulated solely with reference to value in cases before either sudder ameens, principal sudder ameens, or judges. Because a judge thinks it right to decide an interesting case of small amount himself, why should the party pay more than if the judge had sent it to the sudder ameen?

Schedule (B.), head 11. No. 98. Long plaints.

203. Under this head the Judges of the Upper Sudder further remark, that in the Regulations of 1814, it was provided, that if a plaint could not be comprised in the ordinary stamped plaint sheet, additional sheets thereof might be added on the stamped paper necessary for a pleading in the case; no such provision was retained in Regulation X. of 1829, but the judges recommend the revival of the provision in this Act. Certainly the executive government, which is to fix the size of every stamped sheet, will have an extraordinary power of taxation, unless some such rule be adopted. But why may not a general rule, similar to that in Schedule (A.), be adopted in this Schedule, whereby additional sheets would require no stamp?

Schedule (B.), head 12. No. 99.

204. To prevent misconceptions under which the object of the refund of stamp duty, in consequence of the withdrawal of cases before judgment, has sometimes been lost sight of, the Judges of the Upper Sudder propose that the words, "of any description" be added after the word "execution;" and that the words "by either party" be added after the words "can be taken out."

Schedule (B.), head 14. No. 100. Refunds.

205. Upon the existing rules under which refunds are now granted, which are followed verbatim by this Schedule, the Board remark as follows:

"It might, perhaps, be well to modify the rules respecting the refund of stamp duties on the adjustment of cases by razeenamah; at present there is very inadequate security against the same refund being made oftener than once. This abuse has actually occurred; nor would it be checked under the rule proposed in the draft Schedule (B.) A rule to the following effect is proposed for the consideration of the Law Commission: 'If the suit be dismissed on such application before the pleadings have been completed, and the case called up, and the plaintiff applies for a refund of the stamp duty paid on the plaint, the Court, on ascertaining the correctness of the application by reference to the nuthee, will give a certificate stating the value of the stamp on which the plaint is written, with the number of the case on the file of the Court, and the names of the parties in the case; he will then transmit the said certificate, with the paper on which the plaint is written, to the collector, and that officer, provided always there be no exception to the stamp, will return the plaint to the Court, and with it the amount refunded, noting upon the plaint that the amount has been so forwarded to the Court, with date of the transactions. The Court will pay the amount so forwarded to the party entitled to receive the same, taking a receipt from him on the face of the petition of plaint, and a separate receipt to be forwarded to the collector.'

"The above is merely a suggestion, the wording of which, if adopted, will of course have to be amended: it is offered partly with reference to abuse intended to be checked, and partly with advertence to circular orders of the Sudder Dewany, No. 86, dated 10th May 1833, and No. 92, dated 9th August 1833."

"The second rule respecting return of half the value of the stamp after the pleadings have been completed, will of course require a corresponding alteration.

"Refund is made of stamp duty paid on plaints preferred to collectors of land revenue in summary suits connected with arrears or exactions of rent, and which have been adjusted without proceedings coming on in the collector's cutcherry. If it be deemed proper to authorize these refunds, a provision similar to the above will be requisite, with some alteration."

206. The Law Commissioners observe, that they are aware of no objection to rules founded upon these principles.

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On Stamps.

207. I observe, in a pencil note of Mr. Prinsep's, a suggestion that if the stamp could be cut off from the plaint and returned to the stamp-office, it would afford the best possible security.

Schedule (B.), No. 101.

208. The Board suggested the propriety of incorporating with Schedule (B.) the provisions of clause 5, section 2, Regulation XXVI. of 1814, and section 8, Regulation XIX. of 1817, which are still in full force. Those provisions relate to the refund in certain cases of a part or the whole of the stamp duty on special appeals. The Law Commissioners concur in the suggestion. For the sake of ready reference, the provisions in question are copied in the margin*.

I hope the number of distinct questions contained in the voluminous papers which I have been ordered to collect will be taken in excuse of the tedious length to which this Report extends. I have done my best to keep it within bounds. But my chief anxiety has been, that I might note in one paper every point that has been mooted in any quarter on which the members of government will have to come to a decision. I have ventured to add some few points, not noticed in any of the accompanying papers, that struck me as worthy of consideration. The number of questions or points distinctly presented for consideration is 101. The various authorities who have recorded observations upon the subject of this Report are noticed in the margin†.

(signed) *J. P. Grant*,
Deputy Secretary to Government,
General Department.

5 October 1838.

* Cl. 5, Sec. 2, Regulation XXVI. of 1814.

"If the Court shall not see sufficient reason for admitting the special appeal, and shall in consequence reject the petition, the appellant shall not be entitled to receive back the amount or value of the stamp on which the petition may have been written, under clause 3d; the courts are however vested with a discretionary authority, in any particular instance of hardship, to refund any portion, not exceeding three-fourths of the amount of such stamp duty, to the party who may have paid the same, or to his legal representative."

Sec. 8, Regulation XIX. of 1817.

"In the special appeals provided for by the foregoing section, as well as in all other appeals, regular or special, under the Regulations in force, if the suit in appeal be referred back for further investigation and decision, without a judgment upon the merits of the case, the stamp duty paid by the appellant on his petition of appeal shall be returned to him; and if the appellant or respondent have appointed a pleader, his fee shall be limited to such sums as may be deemed an adequate compensation for his labour, not exceeding one-fourth of the established fee in a regular suit."

† The Law Commission, twice; the Board of Customs, Salt and Opium.
The Superintendent of Stamps, Ramchunder Ghosaul, of the Stamp Office.
The Right Honourable Lord Auckland.
The Honourable Mr. Ross.
The Honourable Mr. Shakespear.
Mr. Secretary Prinsep.
The Government of India, Legislative Department.
The Sudder Court at Calcutta.
The Sudder Court at Allahabad.
The Government of Madras twice, with voluminous Reports from the Mofussil authorities on each occasion.
The Sudder Court of Madras.
The Board of Revenue of Madras.
The Superintendent of Stamps at Madras.
The Right Honourable Sir R. Grant.
The Honourable Mr. Farish.
The Sudder Court of Bombay, with Reports from the several Zillah Judges.
The Revenue Commissioner of Bombay.
The Superintendent of Stamps of Bombay.
The Landholders' Society have also submitted two communications on the Stamp Law.

No. 8.
Modification of Sec. 3, Reg. XIII. 1832, Madras Code.

— No. 8. —

ON THE PROPOSED MODIFICATION OF SECTION 3, REGULATION XIII. 1832, MADRAS CODE.

(No. 45.)

Legis. Cons. 2 Nov. 1835. No. 12.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*, Esq. Secretary to the Indian Law Commissioners.

Sir,

Legislative.

I AM desired by the Honourable the Governor-general of India in Council to transmit to you, for submission to the India Law Commissioners, copy of a correspondence with the Chief Secretary to the Government of Fort St. George, noted in the margin, and to request that the Commission will provide for the object therein referred to in the manner indicated by the Honourable the Court of Directors, in their letter dated the 23d July 1834, No. 4, to the Government of Fort St. George.

Letter from Chief Secretary to the Government of Fort St. George, dated 9 October, with Enclosures.
Letter to ditto, dated 2 November 1835.

I have, &c.

Council Chamber, 2 Nov. 1835.

(signed) *W. H. Macnaghten*, Secretary to the Government of India.

(No. 789.)

Legis. Cons. 2 November 1835. No. 9.

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *W. H. Macnaghten*, Esq. Secretary to the Government of India.

Sir,

Judicial Department.

I AM directed by the Right honourable the Governor in Council to submit for the sanction of the Supreme Government the accompanying draft of an Act for modifying the provisions of section 3, Regulation XIII. of 1832, in conformity with the instructions of the Honourable the Court of Directors, contained in paragraph 27 of their despatch in this department, dated the 23d July 1834, No. 4, a copy of which is transmitted for convenience of reference, together with a copy of the letter with which the draft Act was received from the Register of the Foujdaree Adawlut.

I have, &c.

Fort St. George, 9 Oct. 1835.

(signed) *H. Chamier*, Chief Secretary.

(A.)

Legis. Cons. 2 November 1835. No. 10. Enclosure.

ACT No. of ,

Passed by the Honourable the Governor-general of India in Council.

BE it enacted, in modification of the provisions of section 3, Regulation XIII. of 1832, in the Madras Code, that the dismissal of any native officer employed under the magistrate, shall hereafter be directed by a judge of circuit only, by a judicial proceeding, held under the general authority vested in such judge to revise the proceedings of the magistrate, and not in the manner prescribed in that section.

(signed) *W. Douglas*, Register.

(A true copy.)

(signed) *H. Chamier*, Chief Secretary.

No. 8.
Modification of Sec. 3, Reg. XIII. 1832, Madras Code.

Judicial Department.

EXTRACT from a General Letter from the Honourable the Court of Directors, dated 23 July 1844.

(No. 4.)

Para. 27. "WE observe also that by section 3, Regulation XIII. of 1832, you have empowered the judge of circuit to require the dismissal of any native officer employed under the criminal judge or the magistrate; but in adopting this rule, you have overlooked the instructions on the subject conveyed to you in our letter of the 12th October 1831, in the following words:

"It should, we think, be competent to a circuit judge to recommend to the magistrate the dismissal of a native police officer on the ground of any particular misconduct or neglect which may have been established against him in the Circuit Court, but the general question of fitness or unfitness of the police officer for his place should be determined by the magistrate, with whom alone the responsibility should rest. It should be by a judicial act only, under a general power to revise the magistrate's proceedings and to reverse his orders, that the circuit judge should be vested with authority to direct the dismissal of an officer of his establishment. We desire that the rule in question may be modified in conformity to the foregoing instructions, and that in the meantime you will give orders for its being exercised only in that limited manner."

(A true extract.)

(signed) *H. Chamier*, Chief Secretary.

(No. 178 A.)

From *W. Douglas*, Esq. Register, to the Chief Secretary to the Government.

Sir,

WITH reference to the extract from the Minutes of Consultations, under date the 21st ultimo, upon paragragh 27 of the general letter from the Honourable Court of Directors, dated 23d July 1834, No. 4, I am directed by the Judges of Foujdaree Adawlut to transmit to you, for the purpose of being laid before the Right honourable the Governor in Council, the accompanying draft of an enactment for modifying the provisions of section 3, Regulation XIII. of 1832, agreeably to the instructions of the Honourable Court.

2. The judges at the same time beg leave respectfully to represent, with reference to the conclusion of that paragraph of the Minute of Consultation, that the Foujdaree Adawlut have no power to suspend, by an order to the lower courts, the operation of any part of the provisions of the Regulations in force by which exclusively "the civil and criminal courts of justice are to be guided," as declared in section 13, Regulation I. of 1802."

(signed) *W. Douglas*, Register.

Foujdaree Adawlut Register's Office,
30 September 1835.

(A true copy.)

(signed) *H. Chamier*, Chief Secretary.

Legis. Cons. 2 November 1835. No. 11.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George.

Sir,

I AM directed by the Honourable the Governor-general of India in Council to acknowledge the receipt of your letter, No. 781, dated the 9th ultimo, submitting for sanction the draft of an Act, modifying the provisions of section 3, Regulation XIII. of 1832, relative to the dismissal of native officers, in conformity with the instructions of the Honourable the Court of Directors.

2. In

No. 8.
Modification of Sec. 3, Reg. XII., 1832, Madras Code.

2. In reply I am desired to observe, that as the Law Commission are now engaged in the formation of a criminal code which will embrace the powers and duties of the magistrates and criminal courts relative to the appointment and removal of officers, the Governor-general in Council is of opinion that it will be preferable to refrain from legislating on the subject for the present. A copy of your communication will be sent to the Law Commission, who will be requested to give their attention to the remarks of the Honourable the Court of Directors, and in the meantime I am directed to suggest that the course indicated in the concluding portion of those remarks may be followed; and that the judges of circuit may be instructed to increase the powers referred to only in the limited manner indicated by the Honourable Court.

I have, &c.

Fort William,
2 November 1835.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

Unrecorded.

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commissioners, to the Secretary to the Government of India in the Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to request that you will submit for the consideration of the Right honourable the Governor-general of India in Council, the following observations and recommendation on the subject of your letter to the address of Mr. Millett, dated the 2d of November 1835.

2. The Law Commissioners were directed in your letter to provide for the modification of section 3, Regulation XIII. of 1832, of the Madras Presidency, in the manner indicated in the despatch from the Honourable the Court of Directors, dated the 23d July 1834, paragraph 27. But from your letter of the 2d of November 1835, to the Chief Secretary to the Government of Fort St. George, it would seem that the Government of India were of opinion that it would be preferable to refrain from specially legislating on the subject, and to wait until it could be provided for by the General Criminal Code then under operation by the Law Commission; as the matter is entirely one of procedure, it did not of course fail to be considered in that part of the criminal law embraced by the Penal Code lately submitted to Government, and it consequently still remains unprovided for. The question now is, whether it be expedient to provide for it immediately, or to await the maturity and enactment of a general code of criminal procedure.

3. Section 3, Regulation XIII. of 1832, of the Madras Presidency, empowers generally a judge of circuit, for misconduct, "to require the dismissal of any native officer employed under the criminal or joint criminal judge, the magistrate or the native criminal judge, by a letter to be addressed to the head of the department; but if those officers shall object to such dismissal, the judge of circuit shall submit a report of the case for the final orders of the Court of Foujdaree Adawlut." The Honourable Court object to this general power, as regards the dismissal of police officers serving under the magistrate, and, as the Law Commission understand their orders, direct that the law be so altered that the judge of circuit shall have no power to order the dismissal of any such officer, unless by a judicial act. To effect this object nothing more seems to be requisite than to take away, as far as the police officers under the magistrates are concerned, the power given to the judge of circuit by the provision which has been cited. The consideration which seems to have weighed with the Government of India for postponing the enactment indicated by the Honourable Court is, that meanwhile the effect of such an enactment is practically obtainable by the issue of a direction from the executive department to all circuit judges to limit the exercise of their legal powers as it would be limited by the proposed enactment, which was the course that the Honourable Court directed to be adopted intermediately. But the Law Commissioners observe, that when this point was noticed by the Madras government to the Court of Foujdaree Adawlut at that Presidency, the Court respectfully represented "that the Foudjaree Adawlut have no power to suspend, by an order to the lower courts, the operation of any part of the provisions of the Regulations

No. 8.
Modification of Sec. 3, Reg. XIII. 1832, Madras Code.

Regulations in force, by which exclusively the civil and criminal courts of justice are to be guided, as declared in section 12, Regulation I. of 1802" of the Madras Presidency.

It would hence appear to be the opinion of the Foujdaree Adawlut that the only legal method of practically effecting the object of the Honourable the Court of Directors is the passing of a law modifying section 3, Regulation XIII. of 1832, in the manner directed by the Honourable Court.

In this opinion the Commissioners do not concur, for they consider that the power given by that section to the judge of circuit is rather of an executive than a judicial nature. Yet the fact that such an opinion is entertained by the highest tribunal conversant with Regulation law under the Madras Presidency, added to the uncertainty when a general code of criminal procedure may be matured and enacted, makes it advisable, the Commissioners think, not to defer the proposed alteration in the law on this particular point. They therefore respectfully submit to the Right honourable the Governor-general in Council the accompanying draft of an Act with that object.

The Law Commissioners have observed that the Honourable Court express an opinion, that it should be competent to a circuit judge to recommend to the magistrate the dismissal of a native police officer on the ground of any particular misconduct or neglect which may have been established against him in the circuit court, but the Law Commissioners do not consider any legal enactment necessary respecting such recommendations as these. Instructions from the executive department will, they conceive, be sufficient in this respect to guide the several classes of functionaries concerned.

I have, &c.

20 July 1837. (signed) *J. P. Grant,*
Officiating Secretary to the Indian Law Commissioners.

ACT of

It is hereby enacted, in modification of section 3, Regulation XIII. of 1832, of the Madras Code, that from the day of no judge of circuit shall have authority to require, in the manner indicated in the said section, the dismissal of any officer employed under any magistrate.

(signed) *J. P. Grant,*
Officiating Secretary.

(True copies.)

David Hill,
Assistant Examiner of India Correspondence.

East India House,
29 July 1844.

EAST INDIA.

(INDIAN LAW COMMISSION.)

COPIES

OF

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

[*Presented to Parliament in pursuance of the Act* 3 *&* 4 *Will.* IV. *c.* 85, *s.* 54.]

East India House,
17 April 1845.

JAMES C. MELVILL.

Ordered, by The House of Commons, *to be Printed,*
2 *May* 1845.

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1.	15 Feb. 1844 - 25 July —	-- On Civil Judicature in the Presidency Towns.	- - 11 May 1844, (Nos. 5 to 8); 3 August 1844, (No. 1.)	- -	- - Desp. No. 11, 10 May 1844; Letter to Secretary India House, No. 17, 1 June 1844.
2.	25 April 1844	- - On giving Commissioners of the Court of Requests so much of the power given by Stat. 5 & 6 Will. 4, c. 19, to Justices of the Peace in England, as relates to the Recovery of Wages due to Merchant Seamen, and on other matters connected with such Seamen in British India.	- - 11 May 1844 (No. 4.)	- -	- - Desp. No. 29, 20 December 1844, p. 12.
3.	28 Nov. 1844	- - On the binding of Apprentices, and the encouragement thereof, with Draft of an Act.	Not recorded.		

T. L. Peacock,
Examiner of India Correspondence.

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

—No. 1.—

No. 1.
On Civil Judicature in the Presidency Towns.

REPORTS ON CIVIL JUDICATURE IN THE PRESIDENCY TOWNS,

dated respectively the 15th February and 25th July 1844, with connected Papers.

Home Department, Legislative, 10 May 1844.

HOME DEPARTMENT, Legislative, No. 11, of 1844.

To the Honourable the Court of Directors of the East India Company.

Honourable Sirs,

WE have the honour to transmit the accompanying Report, dated 15th February last, from the Law Commissioners, on the subject of Civil Judicature in the Presidency Towns, with a revised draft of Act for establishing a Court of subordinate Civil Jurisdiction in the city of Calcutta. The original draft on this subject was submitted to your Honourable Court with para. 52 of our despatch No. 33, dated the 30th December 1842.

2. We have felt that the subject of this Report involves so much of legal technicality, that we prefer to reserve our own judgment upon it until the opinions of the highest authorities in law and jurisprudence at home shall have been taken, upon the propriety of adopting the scheme recommended by the Law Commissioners, and we therefore request that your Honourable Court will take measures for obtaining such opinions.

We have, &c.

(signed) *Ellenborough.*
W. W. Bird.
T. H. Maddock.
C. H. Cameron.

Fort William, 10 May 1844.

Legis. Cons. 11 May 1844. No. 5.

From the Indian Law Commissioners, to the Honourable the President of the Council of India in Council; dated 15 February 1844.

Honourable Sir,

WE have now the honour to report upon judicature in the Presidency towns, confining ourselves for the present to the civil branch of the subject.

We believe, that in no other country are the judicatures of the capital so completely isolated from those of the provinces, as in the three Presidencies of British India.

In the way of appellate judicature, or of general superintendence, the Supreme Courts have scarcely any connexion with the courts of the mofussil. And in the exercise of their original jurisdiction, those courts, and the courts of requests, have been appointed to administer law in the Presidencies, with as little reference to the improvement of Indian jurisprudence and Indian judicature in general, as if the Presidency towns had to this day been factories in which the Imperial Court of Delhi permitted our Sovereign to administer justice to her own European subjects.

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We have already announced, in our Report upon the *Lex loci* of British India, our recommendation for the establishment at each Presidency town of a College of Justice or High Court of Appeal, consisting of the Judges of the Supreme Court and those of the Sudder Dewanny Adawlut. This high court will exercise appellate jurisdiction, and have general superintendence over all the judicatories of the provinces, and preserve regularity and uniformity of procedure amongst them.

But we would have the mofussil courts taught not only by precept, but by example.

We consider the reform of the Presidency Courts of the greatest importance, not only for the purpose of ensuring the best administration of justice in those towns, but for the still higher purpose of making them fit models for the imitation of all the other courts of the country.

In two respects the courts now existing in the Presidencies are very unfit models:

First, in respect that small causes are adjudicated by a different court and according to a different procedure from all other causes.

In some particulars, the small causes enjoy great advantages over the others; in some, these others enjoy great advantages over the small causes.

At present there is no way in which a suitor in the Presidency towns (Bombay is a partial exception) can have the benefit of cheap and rational procedure (particularly in the *vivâ voce* examination of his adversary) without foregoing the benefit of that legal learning which secures the correct application of the substantive rules of law and equity. Nor is there any way in which a suitor can get the benefit of that legal learning, except by sacrificing the advantages of cheap and rational procedure.

Yet there is in reality nothing incompatible in these two sorts of advantages, though perhaps they have never yet been united in practice. To unite them is one of the main objects of our present scheme, and we shall begin our Report by explaining in what way such suits as usually fall within the jurisdiction of courts of requests, will be dealt with under the system of courts proposed by us.

The second respect in which the courts existing in the Presidencies are very unfit models, is that the rules of law which are called law, and the rules of law which are called equity, are administered by two different jurisdictions.

In the result we contemplate the administration of all the substantive law of the country, put into the form of codes, by one system of courts.

But it seems clear to us, that the rules of law which are called law, and the rules of law which are called equity, should, in their present condition, be administered by one system of courts in the Presidencies, as they already are in the mofussil. On account, however, of the magnitude of this experiment, and on account of the high authorities which may be vouched against it, we propose to proceed by steps.

We propose only to give to our new court power to administer complete justice, that is, to administer equity as well as law, in all suits within its jurisdiction; and we propose that its jurisdiction shall be concurrent with, not exclusive of, the jurisdiction of the Supreme Court in actions at law, leaving to the Supreme Court alone for the present all the rest of its equitable jurisdiction.

We ourselves feel perfectly confident of the success of our experiment, but confidence of the success of such an experiment cannot be attained without long and careful reflection; the public therefore cannot be expected fully to share it.

But proceeding as we propose by steps, all that can be imagined to be put to hazard by failure, is of trifling value, compared with the benefits to be attained by success.

For suppose that, as we expect and intend, the suitors at law should be drawn away from the Supreme Court by the greater cheapness and simplicity of the new procedure, and the faculty of examining the adversary; and suppose further, that, contrary to our expectations, the new judicature, original and appellate, should not appear to those who may watch its operation with a view to the interests of justice, to be a powerful instrument for the discovery of truth, and for the correct application of the rules of substantive law, then the whole of that large portion of equity which is not consequent upon a suit at law, would remain untouched, and if ever reformed at all, would be reformed in some other way. The whole machinery would be left standing, and the portion of equity and of law drawn away by our new court, would revert to its original condition.

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On the other hand, if the experiment should, as we venture to foretel, be completely successful, the Government could then proceed with the greatest confidence to provide that the new court should entertain all suits in equity, whether based upon previous proceedings at law or not.

In like manner and for the same reason (viz. the doubt which may be felt by the reflecting portion of the public as to the success of our experiment), we do not recommend the abolition of the common-law jurisdiction of the Supreme Court. We believe that such a measure might be unpopular, and we think that our object may be attained in a gentler way, and without shocking any prejudices, by allowing the two systems to subsist together. We do not even intend to protect the jurisdiction of the new court, by enacting that no one who sues at law in the Supreme Court shall recover costs.

If this plan is adopted there will be two roads open at once by which the suitors of the Presidencies may obtain the great benefit, of having the profound learning of the Judges of the Supreme Court applied to their affairs.*

To disentangle transactions which the ignorance, negligence and fraud of mankind have complicated, and to refer each essential part of the transaction to the principles of law or jurisprudence which ought to govern it, must always be the subject-matter of a science and an art. It is vain to expect that this science and this art can be fully mastered without long and arduous discipline. That discipline the Judges of the Supreme Court have gone through, and it is because of the high value we set upon their science and art, that we are so anxious effectually to open the advantages of them to the public.

When these two roads are open at the same time, it will be very instructive to observe what sort of causes are carried by the new road, and what sort by the old. Our own belief is, that in no long time it will become disreputable to sue at law in the Supreme Court. It will soon be understood, that a plaintiff who prefers bringing his action there, is a man who is afraid of being personally examined as to the truth of his case, a man who shuns equity and good conscience, a man who wishes to entangle his adversary in the meshes of written special pleadings, and to have his cause decided upon some point foreign to the merits of it.

In this state of things, we of course expect that the common-law jurisdiction of the Supreme Court will wither away in the presence of its rival, and that the legislature will shortly be able to abolish it without exciting alarm or regret.

There are two other respects in which the tribunals of the Presidencies are, in our opinion, unfit models :

First, in respect to their method of pleading.

Secondly, in respect that the public is not associated with them in the business of judicature.

In the Supreme Court there are the elaborate rules of English pleading, calculated, for the most part, as we believe, to produce the best results when they are observed ; but as the pleading is not oral, the mode in which the neglect of them is visited upon the suitors, produces great mischief, and the consequence of this mischief has been a very strong prejudice against special pleading.

To such an extent has this prejudice run, that every unfair attempt to put aside in an argument the real merits of the case, is, in popular language, called special pleading. It must be confessed, however, that the confusion of thought which is implied in such an application of the term "special pleading," is owing quite as much (if not more) to the indiscriminate defence of the English system, as to the indiscriminate attack upon it.

The truth is, that special pleading, that is to say, the logical rules which constitute the essence of it, and which are of universal application, is not only, what Mr. Serjeant Stephen calls it in his admirable treatise on the subject, "a fine juridical invention," but is the method which ought to be followed in all disputes,

* The only qualification we have introduced into the Act for the professional Commissioners, is, that they shall be barristers of five years' standing: under this provision the judges of the Supreme Court might of course be employed in administering justice in the new court. But if they should not be so employed, the suitors will have ready means of obtaining the benefit of their learning, under the scheme which we are recommending, by appeal to the College of Justice.

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putes, whether forensic or not, by parties desirous in good faith of terminating their disputes.

In the court of requests the pleading is oral, but is subjected to no rules.

In neither tribunal is there any jury, or any portion of the public appointed to perform such functions of a jury as are really useful.

The Draft Act for establishing our new court, embodies our project for reform in both these particulars; but we beg to reserve the full discussion of them for a future Report. We are aware that with respect to them differences of opinion exist, while with respect to the subjects of our present Report, we have sanguine hopes of unanimity.

Before entering upon the subject-matter of our Report, we have to make one more prefatory statement.

We have considered anxiously whether it would be better to treat the two topics, viz. the incorporation of small-cause jurisdiction with general jurisdiction, and the incorporation of equity jurisdiction with common-law jurisdiction abstractedly, or by a critical examination of the principal English cases which bear upon the subject.

We have decided upon the latter course. We are sensible, however, that it has some serious disadvantages. Such an examination must of necessity be incumbered with difficult and repulsive technicalities. And as the cases are not imaginary ones, devised by human ingenuity for the illustration of the subjects, they unavoidably contain much matter which is not so illustrative, which matter must nevertheless be examined, for the full understanding of that which is so illustrative. These cases do not resemble the experiments which the chemist invents in order to test his doctrines, and from which he studiously excludes every thing that is foreign to his purpose. But they resemble the chemical processes of nature, which the chemist observes, and in observing which he is forced to pay attention to many things which are beside his immediate purpose, in order that he may be sure he understands what is within that purpose.

On the other hand, these cases possess the great advantage of reality. They are part of history. They exhibit the actual sufferings of human beings under the rules of English procedure, and show how those sufferings might have been prevented; or they show how impending sufferings actually were prevented by the benevolent, yet questionable interference of the judges in relaxing those rules. These cases contain also (and this consideration alone would have determined our course), nearly all the arguments by which the system we are endeavouring to reform, has been defended.

A refutation of these formidable arguments, formidable, as we believe, principally from the high station and still higher abilities of those from whom they have proceeded, seems absolutely essential to our purpose, and is in truth all that is essential to it.

We trust, therefore, that we shall be excused for the dryness, perplexity and technicality of the details into which the course we have adopted will inevitably lead us.

We now proceed to explain in what way such suits as usually fall within the jurisdiction of courts of requests, will be dealt with under the system of courts proposed by us.

It is not to be questioned, that there are a great many suits which, so far as regards original jurisdiction, any sensible man of business is competent to decide without the aid of technical knowledge, and the appointment of unprofessional judges for the decision of such suits, is a measure suggested by a due regard to economy. But it does not appear to us that this object is accomplished in a convenient manner, by two wholly independent sets of courts separated by an arbitrary pecuniary limit, and administering justice under rival systems of procedure, especially when the inferior set decides causes without any more regular and constant supervision, than can be exercised through writs of certiorari and actions of trespass against the judge. The consequence of this arrangement is, that practically the inferior court decides without any control. All its decisions are acquiesced in, though it cannot be supposed that they are all right; or that they are as nearly all right as they would be under the check and stimulus of appellate jurisdiction. We believe there has been no instance of a certiorari to the Calcutta Court of Requests. As far as we know, its proceedings have never

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till lately been called into question. In a late case, a defendant, irritated by a decision against him in a suit which (though the Commissioners had been in the habit of deciding cases of the sort) was beyond their jurisdiction, used, as is alleged, intemperate language to the court, said that the proceedings and decree against him were all illegal, and brought his action against the Commissioner in the Supreme Court, where he recovered judgment upon demurrer.

We think this an invidious way of keeping the inferior court within the limits which are intended to circumscribe its proceedings; and accordingly, in our own system, this is done without any harsh pressure from above, by a smoothly working internal organization of the whole system of courts. If such a case as that to which we allude, which was an action against an executor, were to come before the Subordinate Civil Court which we are proposing, the chief Commissioner (who must be a barrister of five years' standing), would reserve it for himself, or some other professional Commissioner. If by mistake he should assign it to an unprofessional Commissioner, that Commissioner would send it back to him. If by a second mistake the unprofessional Commissioner should not send it back, but proceed to hear and to decide, he would indeed exceed the limits intended in point of convenience to circumscribe his proceedings; but he would not in point of law exceed his jurisdiction; for that has no other limit than the jurisdiction of the Subordinate Civil Court, of which he is a member. Any error he might have fallen into would be set right upon appeal to the chief Commissioner, but the decision of the unprofessional Commissioner would be supported if it should turn out to be right, although, according to the policy of the law, the suit is not one which ought to have been brought before him.

The mode of proceeding by action of trespass against the judge, is applicable only to a case in which the court has exceeded its jurisdiction. So long as the court keeps within the limits assigned it by law, the only mode in which it can be interfered with is the writ of certiorari. This writ may be obtained from the Supreme Court, by any party to a suit in the court of requests, not only upon the ground of excess of jurisdiction, but, it seems, upon any ground from which it can be inferred, that complete justice will not be done by that court. Applied by an English court of law to a court of requests, it is a remedy of an extraordinary and rather violent nature, by which the cause is, as it were, snatched away by a superior indeed, but not superordinate tribunal, to be dealt with according to a different procedure, and upon different principles.

The modes by which in English procedure a superordinate court sets right the mistakes of its subordinates, are writ of error and writ of false judgment.

The certiorari is the mode in which a superior, but not superordinate court controls the proceedings of those which are inferior, but not subordinate to it. The nature of this writ is well explained as far as regards our purpose, by the case of Groenwelt *v.* Burwell.

"The censors of the College of Physicians have power by their charter, confirmed by Act of Parliament, to fine and imprison for malpractice in physic; and accordingly they condemned Dr. Groenwelt for administering *insalubres pillulas et noxia medicamenta*, and fined and imprisoned him: and the question being, whether error or certiorari lay, &c., it was held per Holt, Chief Justice, 1st. That error would not lie upon the judgment, because their proceeding is not according to the course of the common law, but without indictment or formal judgment; yet, 2d. That a certiorari lies; for no court can be intended exempt from the superintendency of the King in his court of B. R."—1 Salk. 144.

Now it is quite reasonable, that in superintending such a collegiate and professional judicature as this, the Court of King's Bench should be satisfied with keeping the inferior tribunal within its jurisdiction; and with seeing that there is no manifest partiality in the proceedings; and should not undertake to decide whether what this learned body had pronounced to be "*insalubres pillulæ et noxia medicamenta*," were really so or not. But it seems to us quite extravagant to say (as is in effect said by using the certiorari as the sole instrument for controlling a court of requests), that a small debt differs from any other debt in the same way as the mala praxis of a physician differs from an ordinary offence.

According to the spirit of our plan, cases which involve questions of law of any difficulty, ought to be decided originally by the professional members of the court; but some questions of law must inevitably arise in the suits which will be assigned to the unprofessional members, and we have therefore provided, that their decrees, as well as those of their colleagues, shall be consistent with equity

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equity and good conscience, following such law as would be administered to the parties by the Supreme Court.

The direction and limitation thus expressly given to equity and good conscience, and which are perhaps tacitly implied in the terms themselves, appear to us of very great importance; and we do not see how we can ensure that this direction and limitation of the equity and good conscience of unprofessional judges shall be constantly observed, otherwise than by giving an appeal from them to judges who have received a legal education.

A court, which should proceed according to any supposed equity and good conscience without reference to law, would be an institution of very questionable utility, or rather such a course of procedure would be impracticable. For it is in truth impossible to say what equity and good conscience require, in a country where there is any law, without considering what were the lawful and conscientious expectations in respect of the subject-matter of the parties concerned; and it is impossible to know what these expectations were, without knowing the law which the parties had in their contemplation.

Even in cases of contract, which are emphatically the province of equity and good conscience, it is impossible to proceed without advertence to the existing law. In many contracts, much is implied by law beyond what is expressed. A bill of exchange, one of the most common contracts, does not express any of the rights and obligations which are created by the act of drawing it. They are all implied by law. How, then, is it possible to adjudicate according to equity and good conscience between the parties to a bill of exchange, without adverting to the law out of which their expectations arise? To put a particular case: let us suppose an action brought against the drawer, and that the defence is, that no notice of the dishonour of the bill was given him. Unless the judge knows, first, that the law imposes upon the drawer an obligation to pay the bill if the acceptor does not; and secondly, that the holder of the bill cannot enforce the obligation if he has omitted to give notice of dishonour to the drawer; unless, we say, the judge knows these things, he may as reasonably expect to find the equity and good conscience of the claim or of the defence, by making the parties draw lots, as by searching for it in his own breast and in the bit of paper before him.

Perhaps, however, it may be asked, if every thing is to be decided according to law, in what sense is this court a court of equity and good conscience?

The answer to this question, so far as regards the cases intended to come before the unprofessional Commissioners, is, we apprehend, that English courts of law have rules of procedure (pleading, evidence and practice) which frequently, though accidentally, shut out the equity and good conscience of the case. The lawful and conscientious expectations of the parties do not depend upon these rules, as they do upon the rules of substantive law. Two men who are conscientious, and who believe each other to be so, do not, when they enter into a contract with each other, expect to have any thing to do with the rules of procedure, and make their contract without any reference to such rules. A court of equity and good conscience, deciding such cases as we intend to come before the unprofessional Commissioners, is then simply a court which is not precluded, by its rules of procedure, from fulfilling the lawful and conscientious expectations of the parties.

It would be difficult to assign any other than technical reasons why such courts should be considered as outcast from the general administration of justice in the country.

Whitelocke, in treating of the Court of Chancery, quotes a gloss on the Grand Coustumier of Normandy, fit to be adverted to upon an occasion of this kind:

"In magistratibus imperium communicatum non est liberum, sed regulis juris subjectum; etiamsi causa ei esset commissa in conscientiâ quia tunc intelligetur de conscientiâ legibus munitâ.—F. 4, 6, gloss."

This gloss Whitelocke thus translates and expands:—"In magistrates, the government (power?) communicated is not free, but subject to the rules of law; though the cause be committed to him in conscience, because that is to be understood a conscience armed with law; not that which one builds to himself. But he must follow the conscience of the public laws; not his peculiar conscience."—Whitelocke's Notes upon the King's Writ, &c. vol. II. p. 393–4.

This doctrine appears to us to be of universal application. We would commit no causes to the conscience which a judge builds to himself. We hold that a court for

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for the recovery of small debts ought to follow the conscience of the public laws, not the peculiar conscience of the judge who happens to be presiding in it; and as a consequence, we hold that such a court should be incorporated with the general judicial system, and subject, like all other courts of original jurisdiction, to have its errors set right by appeal.

It is, however, true, that those courts of conscience of which the sole or the principal object is the recovery of small debts, have never been admitted within the pale, so to speak, of English judicature.

We shall notice in another place a project which Lord Mansfield seems to have entertained, of dealing with their proceedings by means of an action for money had and received (which he was fond of calling a bill in equity), as the Courts of Chancery and Exchequer deal with the proceedings of courts of law by bill in equity properly so called. This project was never followed up, and if it had been, its remedial operation must needs have been very small. But in a late case (Scott *v.* Bye, 2 Bing. 344), an attempt was made to bring the proceedings of the Southwark Court of Requests under the supervision of the Court of Common Pleas, by means of a writ of false judgment, which is the regular mode of correcting the errors of an inferior court not of record. The Common Pleas held that they had no jurisdiction.

Some of the observations made in the judgment delivered, will help greatly to illustrate our own views of the subject.

Chief Justice Best said: "In the court of requests, pleadings in writing are not required, and would be highly inconvenient. A party may be examined as a witness, and the judgment is to be according to equity and good conscience, that is, such as a plain man, ignorant of the rules of law, which the judges of that court must be, shall think just. If the expense and delay that must be occasioned by an appeal to the Common Pleas, did not entirely defeat the object of the legislature in creating courts of requests, can a court, the decisions of which are wisely subject to fixed rules, be a proper tribunal to correct the proceedings of courts where the judges are left to the guidance of their own arbitrary discretion?"

All the other judges took the same view, and Mr. Justice Burrough, putting the principal objection still more pointedly than the Chief Justice, observed, "the words 'equity and good conscience' imply a course of proceeding different from that of the common law, and one of which we are not competent to form a judgment."

According to our conception, the true theory of courts of requests is not that the questions which come before them should be decided by plain men, ignorant of the rules of law applicable to those questions; but that the questions should be of so simple a nature, that the law applicable to them may be presumed to be within the reach of any plain man of ordinary education.

We readily admit, that the expense and delay of an appeal in the form of a writ of false judgment, would defeat the object in view, but the appeal which is intended to be given in our system, will be as cheap, simple and rapid as it is possible to make it. Indeed one of the great objects we most constantly keep in view in our recommendations regarding procedure, is to bring the learning of highly educated judges to bear in the speediest and least expensive manner, upon the disputed rights of all classes of the community.

We have already said that it does not enter into our contemplation to give "arbitrary discretion" to any class of judicial functionaries; and as to the incompetence of English judges to form a judgment of a course of proceeding such as is implied by the words "equity and good conscience," we remark, that the proposition affirming such incompetence, must be understood with special reference to the occasion. Upon a writ of error, or a writ of false judgment, they are incompetent, and if the legislature were to insist upon bringing the proceedings of courts of conscience for revision before them by either of these writs, or by any proceeding in the nature of these writs, the consequence might be, that, notwithstanding the simple and rational nature of the procedure below, the lawful and conscientious expectations of the parties might sometimes be disappointed, by the reversal of decrees which, though arrived at in an irregular manner, might very well stand according to equity and good conscience.

But without going out of the circle of English practice, a mode of proceeding in the nature of an appeal from unprofessional to professional judges, may be found, which, as far as regards the due subordination of form to substance, is every

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every thing that can be desired: we mean, the mode of proceeding by motion for a new trial, and it is accordingly from this that we propose to borrow the principle of our appeal.

If Mr. Justice Burrough had been hearing a motion for a new trial to set right a mistake committed by the jury in trying a cause, he would have expressed himself very differently respecting equity and good conscience, from what he did in the above cited case of Scott *v.* Bye. He would have declared that he understood perfectly well what was meant by those words, and that he was bound to decide in accordance with their meaning.

We propose to examine, with some attention, the leading English cases upon motions for new trials. This examination will show that the principle of confirming upon appeal what has been done irregularly by unprofessional judges (for such juries are when their verdict involves matter of law), provided the justice of the case has been attained, is known and practised in English procedure; and also what a beneficent effect the principle has already produced in the English system, by preventing the disappointment of lawful and conscientious expectations.

Lord Mansfield, inquiring into the whole doctrine of new trials, says,—"The rule laid down by Lord Parker seems to be the best general rule that can be laid down upon this subject, viz. doing justice to the party, or, in other words, attaining the justice of the case."—1 Burr. 395. In another case, he says,—"Though the ground of the verdict should be wrong, yet, if it clearly appeared to us now, that upon the whole no injustice had been done to the defendant, or if it clearly appeared to us now that the plaintiffs, by another form of action, could recover all they have got by this verdict, we think the court ought not to grant a new trial."—2 Burr. 936.

Upon the same subject Lord Camden says,—"We are forced to say, the verdict is according to the justice of the case, and on a motion for a new trial we are desired to grant it for a fault in the declaration against the justice of the case. But if I had only the case of Dearly *v.* The Duchess of Mazarine, 2 Salk. 646, to warrant me (though the jury were liable to an attaint in that case), I would not grant a new trial in the present case."

In the same case Mr. Justice Bathurst says,—"But the court can see in this case, that justice and equity are with the plaintiff, and they never will grant new trials when the verdict is on the honest side of the cause. The case of Smith *v.* Page, 2 Salk. 644, is a very strong case to this purpose. In ejectment, the plaintiff was a mortgagee, and claimed by surrender, whereas the land was not copyhold, and the defendant claimed only by a voluntary conveyance; the verdict was for plaintiff, and the court of B. R. would not set it aside and grant a new trial against the honesty of the cause."—2 Wils. 302.

The case of Edmondson *v.* Machall, was an action of trespass for assaulting and beating the plaintiff's niece *per quod servitium amisit*.

The case proved on the part of the plaintiff was aggravated by many circumstances of ill-treatment. Another cause stood next in the paper for trial which was brought by the niece against the same defendant for the same assault. The counsel for the plaintiff declared their intention of not trying that cause, and withdrew that record. The jury found a verdict for the plaintiff, damages 300 *l.*, which it was admitted were not excessive, if the jury were not confined to the consideration of the mere loss of service to the plaintiff.

Mr. Justice Ashurst said,—"That the judges of this court had consulted with the rest of the judges on this case, and the result of their opinion was, without giving any positive opinion upon the question of law, that this rule (a rule for a new trial) ought to be discharged. An application for a new trial is an application to the discretion of the court, who ought to exercise that discretion in such a manner as will best answer the ends of justice. It does not require much penetration to see what are the ends of justice in the present case. It is certain that the girl herself ought to have some satisfaction for the injury she received, and that she consents not to try her action; the question is, whether justice has not already been done, for it was admitted at the bar, that if the injury she sustained could be taken into consideration in this action brought by the aunt, the damages, which the jury have given, are by no means excessive. Then there does not appear to be any ground for the defendant to call on the discretion of the court to send this cause down to be retried on a technical objection in point of law; and all the judges are unanimously of opinion, that,

as complete and substantial justice has been done, there is no reason to grant a new trial.

" On the plaintiff's undertaking to pay over to the niece the damages, after deducting the costs of this action, and on the niece's undertaking not to proceed in the action in which she herself was plaintiff. Rule discharged without costs." —2 T. R. 4.

In the case of Wilkinson *v.* Payne, Lord Kenyon says,—" In the case of new trials, it is a general rule that in a hard action, where there is something on which the jury have raised a presumption agreably to the justice of the case, the court will not interfere by granting a new trial, when the objection does not lie in point of law. This rule is carried so far, that I remember an instance of it bordering on the ridiculous, when in an action on the game laws, it was suggested that the gun with which the defendant fired was not charged with shot, but that the bird might have died in consequence of the fright; and the jury having given a verdict for the defendant, the court refused to grant a new trial. In this case though the first marriage was defective, a subsequent one might have taken place: the parties cohabited together for a length of time, and were treated by the defendant himself as man and wife: these circumstances, therefore, afforded a ground on which the jury presumed a subsequent marriage. And if there were any ground of presumption, it is sufficient in a case like this. In this case the parties did not intend to elude the Marriage Act, but all their friends were fully informed of and concurred in the former marriage, and I think we should ill exercise the discretion vested in the court, if after the jury had presumed a subsequent legal marriage, under all the circumstances of the case we were to set aside their verdict. In a late case of Standen *v.* Standen the jury presumed a legal marriage, though there was strong evidence to induce a suspicion that there had not been time enough for the banns to have been published three times."—4 T. R. 469.

In the same case Mr. Justices Buller says,—" If the verdict be consistent with the justice, conscience and equity of the case, we ought not to grant a new trial. This is not so strong a case as Dearly *v.* The Duchess of Mazarine, where the court refused to grant a new trial, though the verdict was against law."

In the case of Cox *v.* Kitchin, the same celebrated judge again lays down the same doctrine. The judge who tried the cause had directed the jury, in case they should be of opinion that the defendant was living in a state of open adultery at the time of the contract made, to find a verdict for the plaintiff, for, as the husband under those circumstances would not then be liable, he thought the wife must be liable herself.

" This case comes before the court under very different circumstances from those of the case cited (a case had been cited to show that the law was against the plaintiff). The question there arose on demurrer, whereas this is a motion to set aside a verdict. Motions for new trials are governed by the discretion of the court. When the judge at Nisi Prius has thought fit to save a point, the court has been in the habit of considering itself in the situation of a judge at the time of the objection raised. But this case comes before us without any point saved, and, therefore, we must look to the general justice of the case before we interpose by granting a new trial; nor is it necessary we should nicely examine whether the defendant be strictly liable in point of law. The leading reported decision on the subject of granting new trials, is that of the Duchess of Mazarine. There can be no doubt but that was the case of a verdict against law; yet the court said, that as the justice and conscience of the case were clearly with the verdict, they would not interpose."

He then discusses the law of the case, and concludes—" But whether she be strictly liable or not, it appears that she has lived as a feme sole, that she has represented herself as such, and has obtained credit under that character. The defence, therefore, is dishonest and unconscientious, and on that ground I think that the court ought not to interpose." The rest of the court concurred on this last point, and the new trial was refused.—1 Bos. and Pull. 339.

The case of Smith *v.* Page, 2 Salk. 644, was an action of ejectment. The plaintiff was a mortgagee, and claimed by surrender (a mode of conveying applicable only to copyhold land), whereas the land was not copyhold. The defendant claimed only by a voluntary conveyance. The verdict was for the plaintiff, and the court would not set it aside, and grant a new trial against the honesty of the cause.

The case of Dearly *v.* The Duchess of Mazarine, was an action for wages brought

brought against that celebrated Duchess; and the jury found for the plaintiff, though she gave good evidence of her coverture. The court would not grant a new trial, because, says the report, there was no reason why the duchess, who lived here as a feme sole, should set up coverture to avoid the payment of her just debts.—2. Salk. 646.

These two last cases have already been brought partially to notice, being cited in the other cases as furnishing an argument à fortiori for the decision.

We now proceed to remark upon these cases, and to apply the doctrine contained in them to the matter in hand. They may be divided into three classes.

In most of the cases where the verdict of a jury has been sustained upon considerations of equity and good conscience, no rule of substantive law has been contravened by it. Most of them are only illustrations of the principle which we have cited above from Lord Mansfield. "If it clearly appeared to us now, that the plaintiffs by another form of action could recover all they have got by this verdict, we think the court ought not to grant a new trial." In other words, if the plaintiff is by the substantive law entitled to what the verdict gives him, we will not grant a new trial, because the rules of procedure have been violated.

The case in 2 T. R. 4, is not within the letter, but quite within the spirit of this principle. The plaintiff in that case could not in any form of action have recovered what the jury gave her; viz. damages for the suffering inflicted upon her niece. But the niece herself could have recovered those damages, that is in point of substantive law, for in fact she perhaps could not, for want of other proof than her own testimony, which, according to the English rules she could not have been permitted to deliver in a suit in which she was plaintiff. And as all the evidence necessary to prove her title to them had been given in the action brought by the aunt, the court allowed justice to be attained irregularly and compendiously, by the plaintiff undertaking to pay over to her niece the damages, after deducting the costs of the action.

The first class then is, that in which the courts have sustained a verdict consistent with equity and good conscience, though the rules of procedure have been violated in arriving at it.

We may hope that the rules of procedure laid down for the subordinate civil court will never exclude the justice of the case, and consequently that no cases will occur falling within this class. If, however, any should occur, a decision according to the justice of the case will be protected, notwithstanding any irregularity in the mode of getting at it.

The case from 4 T. R. 469, is of a different kind, and comes very near in substance to a verdict against substantive law; covered, however, as is often the case, with the disguise of a presumption of fact. The marriage in that case was invalid; but because, under the circumstances, it was unconscientious in the defendant to shelter himself under its invalidity, the jury found against him, not directly affirming the validity quoad hoc* of the invalid marriage, but presuming that a subsequent valid marriage had taken place.

Such presumptions as the one made in this case, must be clearly distinguished from presumptions made for the purpose of reaching the truth of a matter of fact. These last presumptions belong exclusively to the subject of evidence; but the presumptions in question are not made because the matter of fact is really believed, but because it is desired that the decision should be such as by law it would be if the matter of fact were true. In this case, for example, the presumption was not made because of the probability that a valid marriage had taken place, but because the assumption that such a marriage had taken place produced a state of facts upon which law and justice could pronounce the same decision; whereas, if no valid marriage had taken place, law must have said one thing and justice another. If in this case the proof of a valid marriage would have produced an unjust decision, then no such marriage would have been presumed without proof. This sort of presumption, then, does not belong, or at least does not belong exclusively, to the head of evidence. It is in truth one of

* Buller J. seems to have thought that the verdict might be sustained upon that ground. In that point of view the case would not fall within any of our three classes.

of the artifices by which courts of justice have endeavoured, without legislating, to decide equitably in cases where the words of a law or of a contract are not what they would have been, if the legislator or the contracting parties had contemplated the particular state of facts which happens to call for a decision upon the law or contract in question.

When we come to make a code of substantive law for the Presidencies, and for all persons in the mofussil who may be subject to the lex loci, of which we recommended the declaration and enactment in our Report of 31st October 1840, we hope that we shall be able to supply the place of these presumptions, by laying down general principles of jurisprudence. In this very case Mr. Justice Buller said, "I doubt whether it was necessary to prove a legal marriage; considering the situation in which all the parties stood, I think that a marriage in fact was sufficient." This opinion (whether it be good English law or not signifies nothing to the present purpose), must have been founded upon some maxim of jurisprudence, never perhaps expressed, but capable of being expressed. Until, however, maxims of this kind which have not been incorporated into English law are expressed in a code, the presumptions of fact which are made to supply their place in the English system, may, we think, be usefully and consistently sanctioned.

The second class, then, may be described as those cases in which the courts have sustained a verdict consistent with equity and good conscience, though some presumption of fact has been made, or must, to sustain the verdict, be made, which would not be permitted to be made (the real probability of the fact being the same), if it operated against the equity and good conscience of the case.

In the three last cases, constituting our third class, the jury seems to have taken upon itself to mitigate the rigour of a rule of substantive law, by considerations of equity and good conscience, and the court to have refused upon the same principle to grant a new trial.

Upon this class of cases it would be sufficient at present to observe, that they are not such as an unprofessional Commissioner ought to take upon himself to decide: we shall, however, before we conclude this part of our Report, take occasion to express our opinion on this kind of legislation by tribunals, whose proper function is to administer law.

The mode by which we propose to guard against the danger of erroneous decisions of the unprofessional Commissioners on the one hand, and on the other hand against the danger that substantial justice may be defeated by an appeal from unprofessional to professional judges, is not by the introduction of any exotic principle into English judicature, but of a principle long known and acted upon in that system with very beneficial effect.

The principle is applicable also, and is applied by us, to the case of an appeal from an inferior to a superior professional judge, but it is never applied by us where a rule of substantive law has been infringed. In the English system it is not so applied, where the infringement has taken place by the misdirection of a professional judge, the reason of which is well worth considering for the sake of illustration.

In writs of error, nothing but questions of strict law come before the appellate court. On motions for a new trial, the court, as we have seen, does consider the question whether upon the whole justice has been done by the verdict, and in general sustains the verdict if it can decide that question in the affirmative. But there is an exception in the case where the verdict has been given in consequence of a misdirection by the judge. The courts will never sanction an incorrect proposition of law laid down by a judge, though they will sanction a verdict involving such a proposition, provided it have not been laid down by the judge. In the case of Wilson *v.* Rastall, Lord Kenyon says, "there is not a single instance where a new trial has been refused, in a case where the verdict has proceeded on the mistake of the judge;" and a little further on, "wherever a mistake of the judge has crept in, and swayed the opinion of the jury, I do not recollect a single case in which the court has ever refused to grant a new trial."—4 T. R. 758.

The principle of this exception we conceive to be, that the courts have felt, that when a proposition laid down by a judge is brought to their notice, they are bound to say either that it is law, or that it is not law, and in the former case to adopt it, and in the latter to reject it, to all intents and purposes. If, therefore, they adopt an incorrect proposition of law laid down by a judge, they adopt it as

as a rule for other cases; whereas, when they sanction a verdict involving an incorrect proposition of law, the incorrect proposition avails only as regards the particular case in judgment, and forms no rule for the future.

We do not mean that the whole case affords no authority for the decision of like cases coming before the court in the same way; for if the course adopted was proper on one occasion, it must be proper on all occasions involving the same exigency. We mean only, that the erroneous proposition of law is not by this conditional sanction erected into a principle, and adopted with all its logical consequences. It is adopted so far only as it conduces to produce a decision consistent with equity and good conscience, and would no more be admitted as law in a case in which it is not required for this purpose, than those presumptions of which we have treated above would be admitted as proof of a fact in a case where the existence of such a fact is not required for the same purpose.

If a discretionary power to mitigate the pressure of rules of substantive law is to be given to the courts at all, we think it quite right that such a power should be thus limited. For every rule of law, so long as the legislature suffers it to subsist, ought to be presumed by the courts to be beneficial in its general operation, and therefore ought to be relaxed only in those particular cases (be they many or be they few) in which circumstances presumably not contemplated by the legislator, would cause a strict and literal execution of his commands to work injustice.

Our court, however, is not to be invested with any such discretionary power. It is to decide according to the substantive rules of English law, when they are not inconsistent with the substantive rules of English equity; and when that is the case, according to those latter rules. If there are any cases in which a court applying those substantive rules by means of such a procedure as we recommend, will not reach the justice of the case, we think it better to call upon the legislature for a remedy, than to give a discretionary power to the judges.

We do not say that under no circumstances is such a discretionary power over the rules of substantive law desirable, but only that it is not desirable under the circumstances with which we are here concerned.

We have now explained the provisions made in our system for incorporating with general judicature the jurisdiction both original and appellate over those causes which, according to the English plan, are left to the uninformed equity and good conscience of courts of requests, unless the plaintiff chooses rather to submit to the expensive technicalities of the superior courts. We proceed to the consideration of a more obscure and difficult topic, viz. the incorporation of equitable with legal jurisdiction.

In the perusal of the following criticisms we beg it may be borne in mind, that we have selected such cases as most forcibly illustrate the evils of separating law from equity generally; we have not confined ourselves to those cases which exhibit that particular portion of those evils for which we are now suggesting a remedy; our object being not only to prove that the step we are now proposing to take is a step in the right direction, but also that the point which we intend as the terminus of our course in this direction, is the right terminus.

In our Report upon the substantive law to which, we think, all persons in the mofussil, not subject to Hindoo or Mahommedan civil law, should be subject, dated 31st October 1840, we expressed a strong opinion against the separate administration of law and equity which obtains in the English system. We contemplate as the ultimate result of our labours upon this subject, the administration by one uniform set of courts, of a code composed (with additions and alterations) of the materials supplied by English law and English equity. This result, however, must be regarded as distant; but the present occasion appears to be a fit one for taking a very important step towards it. The nature and extent of that step will be understood from what follows.

The subject is very intricate, and much adventitious obscurity has gathered about it, from the want of accurate distinction between schemes for investing courts of law with equitable powers by means of legislative interposition, and schemes for doing the same thing by mere judicial authority. All schemes of the latter kind must be defective, must be productive of consequences not desired by the framers of them; because no judge, however much disposed *ampliare jurisdictionem* for the benefit of the suitors in his court, can venture by mere judicial authority to assume all the powers and to create all the machinery which

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are necessary for the effectual exercise of equitable jurisdiction. The legislature alone can give these powers and this machinery.

The opponents of this branch of law reform can say with truth that Lord Mansfield failed in his attempt to accomplish it; that Lord Kenyon, Lord Eldon, and Lord Redesdale have pronounced his attempts to be extremely mischievous; and that Mr. Justice Buller, who was his favourite disciple, is believed, upon the high authority of Lord Eldon, to have recanted in his latter days, when mature experience had shown him the fallacy of his early opinions.

If these statements could neither be answered nor explained away, it would be impossible to deny that they form a very strong presumption against the success and the prudence of any such enterprize as that in which we are now endeavouring to engage the Government of India. But a careful examination of the leading cases at law and in equity, upon which these statements are founded, will show that they may be completely explained away, so far as regards our purpose, by the distinction above brought to view. Perhaps, also, it will appear from this examination, that even the inherent deficiency of the instrument with which Lord Mansfield worked, would not have rendered the attempt so unavailing, if the zeal and industry of later judges and Chancellors had not been so steadily exerted to counteract it. If, instead of this, Lord Mansfield's doctrines had been followed, it is probable that the public opinion on the subject would have been changed, and that the legislature would in time have conferred the necessary powers upon the common-law courts. It is possible also, that Lord Mansfield thought the process of attachment might be employed for enforcing any equitable jurisdiction which the courts of law might succeed in acquiring.

Sir James Scarlett (now Lord Abinger), in a communication to the Commissioners on Courts of Common Law (from which we have borrowed some of the provisions of our scheme), published in the Appendix to their first Report, expresses himself as follows:

"The courts of common law should be possessed of sufficient power in all cases of actions properly brought before them, to oblige the parties to do justice to each other, without having recourse to a bill in equity. Those who look to the history of the common law from the accession of Lord Mansfield to his high station in the Court of King's Bench will perceive, that if the same liberal and enlightened spirit had always prevailed in the courts of common law, many of the difficulties in the way of suitors would long since have vanished: he first allowed a defendant to have a commission from the court for examining witnesses abroad. The legislature has slowly and at length allowed the same privilege to a plaintiff."—p. 655.

We proceed to the examination of the cases. Lord Mansfield, finding himself frequently obliged in the Court of King's Bench to do what he felt to be unjust, and what he knew that the courts of equity would on that account render of no effect, looked anxiously for every occasion on which, by the exercise of judicial discretion, he might assimilate the doctrines of his court to those of the equity courts, and thus do justice at once to his suitors, instead of driving them to seek it elsewhere at the cost of much money and much time. For this he was stigmatized by Junius as an "admirable Prætor," and by Lord Redesdale from the bench as having "on his mind prejudices derived from his familiarity with Scotch law." The desire of a judge to be saved from the necessity of doing manifest injustice might, one should think, be accounted for without having recourse to prejudices in favour of the Scotch or Roman systems. Lord Mansfield, no doubt, admired this part of those systems, because he desired to decide justly; he did not desire to decide justly because he saw in those systems the means of doing so.

One occasion which presented itself to him of assimilating the decisions of his court to the decisions in equity, was the execution of powers of appointment.

In the case of Rattle *v.* Popham, it appeared that upon a marriage settlement a power was given to every tenant for life, when in possession, to limit the premises to any woman he should marry for her life, by way of jointure, and in lieu of dower. The tenant for life made a lease for 99 years determinable on the death of his wife. Lord Hardwicke, in a court of law, held the lease not to be warranted by the power. The widow brought her bill in the Court of Chancery, and Lord Talbot, arguing from the same premises, the power and the lease, without any other circumstance, held the lease to be warranted by the power, and decreed the defendant to pay all the costs both at law and in equity. —See 2 Strange 992; 2 Burr. 1147; 7 T. R. 480; and Cunningham 102.

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Lord Mansfield thought this a very inconvenient and absurd collision of law and equity, and he thought moreover that on this particular subject, viz. the execution of powers of appointment, the collision was not rendered necessary, nor even justified by technical principles. He thought that powers of appointment, being originally in their nature equitable, and only falling under the cognizance of courts of law by virtue of the Statute of Uses, whatever is a good execution of a power in equity ought to be a good execution at law. He seems, however, to have been fully aware, that both the legal and equitable decisions on the subject were inconsistent with this doctrine.

The short history of this matter is as follows:—In Whitlock's case, 8 Rep. 69 b., it was laid down and agreed by the whole court, that under a power to make an estate for three lives, the donee cannot make a lease for 99 years determinable upon three lives.

This resolution of the Court of King's Bench, Lord Nottingham, when Lord Keeper, declared might be laughed at. This was in the case of Smith *v.* Ashton, Mich. 1675. In Freeman's Cases in Chancery, Appendix 309, he is thus reported, "but when it doth appear that it was intended the person should have such a power, the Court of Chancery will not be strict in all the circumstances of executing it; and he said the resolution in Whitlock's case, 8 Co. (where an estate is made for 99 years, if three lives lived so long, in pursuance of a power to make leases for three lives), may be laughed at; and therefore although *æquitas sequitur legem*, generally, yet sometimes *lex sequitur æquitatem*, and the judges of late have made larger constructions of powers, as appears in Cumberford's case, 2 Roll. 262."

It does not here appear, with perfect distinctness, whether Lord Nottingham meant that the decision in Whitlock's case might be laughed at because it was bad law, or only because it was such law as a court of equity would take care to render of no effect. But enough appears to warrant us in believing, that this eminent Chancellor did not (as some later equity judges have done) hold it to be the duty of the common-law judges to presist in making decisions at law, which were sure to be laughed at in equity.

It was, however, upon the authority of the resolution in Whitlock's case, that the above-mentioned case of Rattle *v.* Popham was decided at law.

Lord Mansfield's opinion upon that case, and upon the subject in general, is expressed in the case of Zouch *v.* Woolston, 2 Burr. 1146:—

"There is good sense in what Mr. Dunning said (Mr. Dunning was counsel for the defendant), that executions of powers should have the same construction, force and effect in courts of law, which they have in courts of equity, because the Statute of Uses transferred that mode of real property from equity to the common law. Whatever is a good power or execution in equity, the statute makes good at law."

This and other observations of Lord Mansfield in the case of Zouch *v.* Woolston, gave rise to the violent assault which Lord Redesdale made upon him in the case of Shannon *v.* Bradstreet, 1 Schol. and Lef. 52:—

"Lord Mansfield had on his mind prejudices derived from his familiarity with the Scotch law, where law and equity are administered in the same courts, and where the distinction between them which subsists with us is not known; and there are many things in his decisions which show that his mind had received a tinge on that subject not quite consistent with the constitution of England and Ireland, in the administration of justice. It is a most important part of that constitution, that the jurisdictions of the courts of law and equity should be kept perfectly distinct; nothing contributes more to the due administration of justice. And although they act in a great degree by the same rules, yet they act in a different manner, and their modes of affording relief are different; and any body who sees what passes in the courts of justice in Scotland, will not lament that this distinction prevails. But Lord Mansfield seems to have considered that it manifested liberality of sentiment to endeavour to give the courts of law the powers which are vested in courts equity; that it was the duty of a good judge *ampliare jurisdictionem*. This, I think, is rather a narrow view of the subject; it is looking at particular cases rather than at the general principle of administering justice, observing small inconveniences, and overlooking great ones. On this argument of Mr. Dunning, Lord Mansfield said that 'there was good sense in what he said,' and that 'whatever is a good power or execution in equity, the Statute of Uses makes good at law:' very good; but the statute does not make good at law what was not good in equity, but which a court of equity, by its peculiar

peculiar mode of acting, will make good. This distinction Lord Mansfield was much disposed to overlook; for example, he considered contracts for leases to be leases, and was followed by Mr. Justice Buller. Great inconveniences ensued, which are now happily got rid of. A court of equity makes good a contract by decreeing an actual lease; a court of law cannot do so. Lord Mansfield inclined to hold a party bound by a contract not to set up his legal title in ejectment, and so in many other instances; forgetting what he himself had been familiar with in his practice in equity, and that he would endanger half the titles in the kingdom.

"Mr. Justice Buller held, that when a mortgage term had been once assigned in trust to attend the inheritance, the owner of the term could not make it a mortgage term again, and in consequence he drove the mortgagee into a court of equity, and produced that very mischief which Mr. Justice Wilmot, in Zouch *v.* Woolston, considered to be a very grievous one; Lord Mansfield is represented by the Reporter in the case of Zouch *v.* Woolston, as having said that 'after the 'Statute of Uses, courts of equity reasoned as they would have done if that 'statute had not been made. And yet, whatever is an equitable ought to be 'deemed a legal execution of a power; for there can be no circumstance to affect 'a remainder-man personally in conscience when a power is not duly executed, 'any more than the issue in tail or the successor of an ecclesiastical person if a 'lease is not duly made.' If these words really dropped from Lord Mansfield, he must have totally forgotten all that passed while he was in practice in courts of equity. This would overturn the case of Coventry *v.* Coventry, and all the cases on jointuring powers. The cases of tenant in tail and of ecclesiastical persons are totally different; there was no power to bind a remainder-man arising from the nature of an use previous to the Statute of Uses; and as to ecclesiastical persons, they are prevented by statute from making leases except pursuant to the statute, and all leases not made pursuant thereto are expressly made void against the successors, to all intents and purposes. The same Reporter makes Mr. Justice Wilmot say, 'it is much to be lamented, that after the Statute of Uses the courts of common law had not adopted all the rules and maxims of courts of equity.' It is scarcely to be believed that this could have fallen from Mr. Justice Wilmot; and if Lord Mansfield found fault with the decision in the case of Rattle *v.* Popham, as he is represented to have done, I think, with deference, that there was no ground for the remark. I must therefore consider what is thus attributed to Lord Mansfield and Mr. Justice Wilmot in the case of Zouch *v.* Woolston, as of no authority on this subject; and I think I am warranted by the decision in Campbell *v.* Leach (made with the concurrence of such high authorities as Lord Chief Justice De Grey, and Chief Baron Smyth) in saying, that a contract of this description does bind a remainder-man."

Before we proceed to consider these objections of Lord Redesdale with reference to our own purpose we must endeavour to clear up some of the difficulties which appear to us unnecessarily to perplex this controversy. When Lord Redesdale insinuates that the expressions attributed to Lord Mansfield and Mr. Justice Wilmot* are so absurd that it is hardly to be believed that they really could

* When Lord Redesdale said "it is scarcely to be believed that this could have fallen from "Mr. Justice Wilmot," he was, perhaps, only using a courteous form of expressing his abhorrence of the doctrine against which he was contending. If he really meant to express a doubt whether Mr. J. Wilmot had said what Sir J. Burrow attributes to him, we think that doubt may easily be dispelled.

In the life of Chief Justice Wilmot it is stated, that, "He uniformly lent Mr. Burrow his papers, with such short notes as he took himself," p. 14. It is therefore very unlikely that the reporter should have misapprehended his meaning.

But there is independent evidence that the opinion in question, viz. that "it is much to be lamented that after the Statute of Uses the courts of common law had not adopted all the rules and maxims of courts of equity," was in accordance with, or rather was only a particular case of the general opinion which Chief Justice Wilmot entertained upon the English system of law and equity. In the case of Collins *v.* Blantern he is reported to have used the following words:

"The third point is, whether this matter can be pleaded. It is objected against the defendant that he has no remedy at law, but must go and seek it in a court of equity; I answer, we are upon a mere point of common law, which must have been a question of law long before courts of equity exercised that jurisdiction which we now see them exercise; a jurisdiction which never would have swelled to that enormous bulk we now see, if the judges of the courts of common law had been anciently as liberal as they have been in later times; to send the defendant in this case into a court of equity, is to say that there never was any remedy at law against such a wicked contract as this is. We all know when the equity part of the Court of Chancery began. I should have been extremely sorry if this case had been without remedy at common law. *Est boni judicis ampliare jurisdictionem*, and I say, *est boni judicis ampliare justitiam*; therefore, whenever such cases as this come before a court of law, it is

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could have used them, he seems to us to be under a great misapprehension of their meaning, and also to suppose that the differences between them and his own opinions were more numerous than in truth they were.

The only fundamental difference, from which all the rest are deducible, is as to what is a good execution of a power in equity, putting law out of the question.

Lord Redesdale admits, that whatever is a good power or execution in equity, the Statute of Uses makes good at law; but he implicitly denies that such an execution of a power as the lease in the case of Rattle *v.* Popham, is good in equity. According to him, it is only such an execution as a court of equity, by its peculiar mode of acting, will make good. Lord Mansfield, and Mr. Justice Wilmot, on the other hand, would have said, and, as it appears to us, with rigorous accuracy, that the lease was a good execution in equity; and that the only reason why a court of equity acts in such cases in the peculiar mode alluded to, is for the purpose of making such an execution of a power good at law. And consequently, if the courts of law had (as Lord Mansfield thought they ought) held such executions of powers to be good at law by the statute, because they were always good in equity, there would have been no necessity for courts of equity to interpose with their peculiar mode of acting, so far as regards the execution of powers. When Lord Mansfield held an agreement for a lease to be a lease, he was proceeding on different grounds. The Statute of Uses did not help him then. He was no longer availing himself of technical principles to get at equity in a court of law, but encroaching upon equitable jurisdiction, with no other excuses than the desire of doing justice, the equitable origin of the purpose to which the action of ejectment has been applied, viz. that of recovering the land, and the doctrine that ejectment, being a fictitious action invented by the courts, no party ought to be permitted to prevail in it against good conscience. But in his doctrine respecting the execution of powers, he was able to deduce the conclusions at which he desired to arrive, from the letter and spirit of the Statute of Uses, that statute having converted a large portion of equity into law. We do not think it necessary to quote any of the numerous equity cases in which it is distinctly laid down, that such an execution of a power as the one in question, is good in equity. It would, indeed, be sophistical to quote them against Lord Redesdale; for he, of course, did not mean to dispute the proposition as it is used in those cases, but only to explain it. To show (that is) that when the authorities say a good execution in equity, they mean an execution which will be made good in equity by the mode of acting peculiar to the courts administering that system. That is the real question on which Lord Mansfield's opinion and Mr. Justice Wilmot's, are to be set against Lord Redesdale's; and it is not properly a question of English equity, but a question of general equity, and one of which none of the English equity cases afford any solution. It could not, indeed, ever arise for practical solution in any English court of equity. It could only arise for practical solution in a country where there are no courts but courts of equity.

The question, stated generally, is this. When A is bound in conscience (as for example by having contracted) to make a good title to B, why does a court of equity direct him to execute a conveyance? Is it for the purpose of conferring upon B a good title both at law and in equity, or merely a good title at law? We conceive it is for the latter purpose only.

So little has this part of the theory of our legal constitution been considered, that, as far as we know, the only authorities on it are, first, that of Lord Mansfield and Mr. Justice Wilmot themselves, in this case of Zouch *v.* Woolston, and some other cases (if we are not mistaken in supposing that this doctrine is involved in them), and secondly, that of Professor Austin, in his notes to the Table containing "The arrangement which was intended by the Roman Institutional Writers (according to the opinions current amongst civilians from the latter portion of the 16th to that of the 18th century)."

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is for the public good that the common law should reach them and give relief. I have always thought that formerly there was too confined a way of thinking in the judges of the common-law courts, and that courts of equity have risen by the judges not properly applying the principles of the common law, but being too narrowly governed by old cases and maxims, which have too much prevented the public from having the benefit of the common law." 2 Wils. 350.

"According to English equity," says Mr. Austin, (*i. e.* according to the law which certain of our courts administer) "a sale and purchase, though it is styled a contract, imparts to the buyer, without more, dominion or *jus in rem*. In the technical language of the system, what is agreed to be done is considered as done. The subject of the sale is his, as against the seller especially; and the subject is also his, as against the world at large. The only interest in the subject which remains to the seller is a right in re *alienâ*, a mortgage or lien expressly or tacitly created, to the end of securing the equivalent for which he has aliened.

"But according to the antagonist system, which is styled pre-eminently Law, a sale and purchase, without more, merely imparts to the buyer jus *ad* rem. The seller is obliged by the sale to transfer the subject to the buyer, and, in case he break his obligation by refusing or neglecting to transfer, the buyer may sue him on the breach, and recover compensation in damages. But that is the extent of the right which the sale imparts. The property or dominion of the subject still resides in the seller, and, in case he convey the subject to a third person, the property or dominion passes to the alienee.

"Now, if the antagonist law were fairly out of the way, the right of the buyer according to equity would stand thus: Unless the seller refused to deliver the subject, and the buyer, in that event, were satisfied with his right to compensation, the sale and purchase, though styled a contract, would give him completely and absolutely dominion, or jus *in rem*. He could vindicate or recover the subject as against the seller himself, and as against third persons who might happen to get the possession of it. The so-styled contract would amount to a perfect conveyance.

"But, by reason of the dominion or property which remains to the seller at law, the sale and purchase, even in equity, is still imperfect as a conveyance. In order that the dominion of the buyer may be completed in every direction, something must be done on the part of the seller. He must pass his legal interest in legal form. He must convey the dominion or property which still resides in him at law, according to the mode of conveyance which law in its wisdom exacts.

"To this special intent or purpose, the buyer, even in equity, has merely jus *in personam*, or (borrowing the language of the Roman lawyers) the subject of the sale, even in equity, continues *in obligatione*.

"Speaking generally, the buyer, in contemplation of equity, has dominion or jus *in rem*, and speaking generally, the sale, in equity, is therefore a conveyance.

"But to the special intent or purpose which is mentioned above, the buyer has jus *in personam*, or (changing the shape of the expression) the seller remains obliged. This right *in personam certam* and this corresponding obligation, equity will enforce in specie. And in respect of this right *in personam*, and of this corresponding obligation, the sale, even in equity, is properly a contract."

This is a very explicit statement of the general doctrine of English equity; and, if it is also a correct one, it follows, with regard to the execution of powers for meritorious consideration, that, as soon as the Statute of Uses had put "the antagonist law fairly out of the way," every court in the country ought to have held that such an execution of a power as was, speaking generally, a conveyance in equity before the statute, and only not a conveyance in equity for the special purpose of enforcing the obligation to make such a conveyance as "law in its wisdom exacts," every court in the country, we say, ought to have held such an execution to be a perfect conveyance to all intents and purposes.

Now, if this doctrine be kept in view in the examination of the dispute about the execution of powers, it will be seen that (be the doctrine correct or incorrect) Lord Mansfield knew perfectly well what he was about, that there is no ground for accusing him of having forgotten all that passed while he was in practice in courts of equity, and of overturning all the cases on jointuring powers, nor for assuming that he held a contract of the sort in question not binding on a remainder-man.

Sir E. Sugden, in his work on Powers, adopts Lord Redesdale's view of the question of general equity, and also his two suppositions; first, the supposition that Lord Mansfield was altogether forgetting that question, whereas we believe that

that it was distinctly present to his mind, and that all his conclusions are logically deduced from it; and secondly, the supposition, which we believe to be equally unfounded, that Lord Mansfield thought his doctrine, that the execution of powers should receive the same construction at law as in equity, was in accordance with the course which, under the existing circumstances, courts of equity had adopted.

On the question of general equity, and on the supposition that Lord Mansfield had neglected it, Sir Edward Sugden merely adopts what Lord Redesdale had said. But with respect to the other supposition he observes, "Lord Mansfield adduced this decision of Lord Talbot's (the decision in equity in Rattle *v.* Popham) in support of his favourite doctrine, that whatever was an equitable, ought to be deemed a legal execution of a power. In a late case before Lord Redesdale, in which he combated this doctrine, he said that if Lord Mansfield found fault with the decision in the case of Rattle *v.* Popham, as he was represented to have done, he (Lord Redesdale) thought, with deference, that there was no ground for the remark; and indeed, notwithstanding Lord Mansfield's assertion, it appears from a manuscript note of the case, which will be found in the Appendix to this volume, that Lord Talbot admitted clearly that the power was not well executed at law, but he relieved the wife against the defective execution on the general rule of equity."

Now there is no assertion of Lord Mansfield inconsistent with this version of the case. He never meant to say that Lord Talbot found fault with the decision at law. He did not adduce the case in support of his own favourite doctrine, but for the purpose of showing what mischiefs had ensued because courts of law had omitted to adopt that doctrine, and had thus driven courts of equity to deal with these cases, just as if the Statute of Uses had never been enacted.

All this derives strong confirmation from what Lord Mansfield himself afterwards said, in the case of the Earl of Darlington *v.* Pulteney:—

"It is very difficult to maintain on any principle of law, reason or convenience, a distinction between equitable and legal executions of powers, which were originally in their nature equitable, but they are by the Statute of Uses transferred to common law. Mr. Kenyon has said very truly, that at common law, powers were unknown. They were modifications of trusts, and directions to the trustees which bound his conscience, and which he was compellable in a court of equity to execute. The Statutes of Uses transferred entirely all that was equitable into a legal modification; and the courts of law were then bound to ask what was the equity. It has likewise been very truly said, that there were few cases upon the execution of powers before the statute 27 H. 8, c. 10, and none have come down to our time by way of precedents. Powers, therefore, being a new thing, and the courts of law having no equitable precedents in point to guide them, compared them at first to conditions, which they are not at all like; and consequently held that they should be construed strictly. They looked upon them in the lights of powers vested in a third person over the estate of another man; whereas in fact they are only a different species of ownership, and enjoyment of property. But a long series of precedents has now settled in the Court of Chancery, that in the construction of powers, wherever the power is executed for a meritorous consideration, namely, as a provision for a wife or child, or for the benefit of creditors or purchasers, there the precise form prescribed for its execution need not be strictly pursued, and if it is now settled, it is settled on principles that existed before.

"That being the case, courts of law ought to follow equity, because there should be a general rule of property; and, if the courts of equity say, we will presume that when the execution is for a meritorious consideration, a strict adherence to the precise form was not intended, and therefore it is not necessary; the moment the same rule is fixed and adopted at law, every man who creates, and every man who is to exercise a power, understands what he is to do. In the construction of powers, originally in their nature legal, courts of equity must follow the law, be the consideration ever so meritorious; for instance, powers by a tenant in tail to make leases under the statute, if not executed in the requisite form, no consideration ever so meritorious will avail. So with respect to powers under the Civil List Act, powers under particular family entails, as the case of the Duke of Bolton, &c.; equity can no more relieve from defects in them, than it can from defects in a common recovery. The principle upon which

which the rule of construction in these cases is founded is, that there is nothing to affect the conscience of the remainder-man. Therefore it is difficult upon principles to maintain any distinction between equitable and legal execution of powers."—Cowp. 266.

It is remarkable that Lord Redesdale takes no notice of this case. Yet, if Lord Mansfield's reasoning in it is considered with care, and without a disposition to find him in the wrong, his meaning can scarcely be misapprehended. His doctrine and that of Mr. Justice Wilmot, unaltered in substance, but shaped so as to obviate the misunderstanding to which it has been subjected, may perhaps be thus expressed.

As soon as the Statute of Uses had passed, courts of law were bound to ask what was the equity, because the statute said that the law should follow the equity. But unfortunately, having no equity precedents to guide them, they took a wrong direction, and, comparing powers to conditions, which they are not at all like, held that they should be construed strictly. A long series of equity precedents has now settled, that wherever the power is executed for a meritorious consideration, the precise form prescribed for its execution need not be strictly pursued. It is true these precedents are all since the Statute of Uses; but they proceed on principles of equity that existed before the statute, principles therefore which the courts of law ought to have adopted immediately upon the passing of the statute. If they had done so, there would now be a general rule of property. A clear intention to execute a power for a meritorious consideration appearing in writing, would be a good execution of the power both in equity and at law. There would be no occasion for courts of equity to exercise in these cases their peculiar authority, of compelling a party to do what in conscience he ought to do. They have only been driven to exercise that peculiar authority by the mistake which courts of law made in not adopting equitable principles after the statute, neither would there be any occasion to adopt the questionable doctrine that a remainder-man is bound in conscience to do what the particular tenant ought in conscience to have done; for the remainder-man in these cases would be bound in law by what the particular tenant had actually done; and "the case of Coventry *v.* Coventry, and all the cases on jointuring powers," so far from being overturned, would thus rest on a more intelligible and secure foundation.

This, as it seems to us, was the doctrine of Lord Mansfield and of Mr. Justice Wilmot, to which they desired to bring back the courts wherever they were not bound by express decisions. But they never meant to say that their doctrine had been adopted even by courts of equity. On the contrary Lord Mansfield expressly says, that after the Statute of Uses, courts of equity reasoned as they would have done if that statute had not been made. That is to say, finding that, notwithstanding the statute, courts of law did not inquire what was the equity, and follow it, and that the statute was therefore pro tanto a dead letter, they had no other means of enforcing equity but by doing as they would have done before the statute, that is to say, by decreeing such formal assurances, or adopting such other modes as would protect the parties from the effect of the erroneous doctrine adopted by the courts of law.

We have now shown perhaps, that Lord Mansfield and Mr. Justice Wilmot were technically right in thinking, that a clear intention to execute a power for a meritorious consideration appearing in writing, is actually a complete execution in equity, putting law out of the question. But at all events we have shown that Lord Mansfield and Mr. Justice Wilmot assumed that proposition, and that, if it be assumed, their whole doctrine is coherent and intelligible, at variance with the decisions at law, and even with the decisions in equity so far as these last admit the correctness of the decisions at law, but in other respects not subversive but confirmatory of them.

It was necessary to clear away the obscurity which hangs over this controversy, before we could say with confidence, as we now can, that (with one exception to be presently noticed) none of Lord Redesdale's or Sir E. Sugden's arguments against permitting courts of law to adopt equitable doctrines, apply to our plan. Those arguments all depend upon the inability of courts of law to compel specific performance; but the court we are recommending is to have that power.

In another point of view, the long discussion into which we have been led, has

a practical value directly applicable to the general purpose of this Report. For we believe that nothing is more calculated to throw light on the somewhat abstruse subject of English equity, than a careful examination of this remarkable controversy.

It is most probable, as we have already hinted, that Lord Mansfield, if he had succeeded in making his doctrine the practical rule of the courts of law, intended either to procure from the legislature an express authority to compel specific performance, or to use the power of granting an attachment, which is inherent in the courts of law, for the accomplishment of that purpose. But however this may be, the arguments of Lord Redesdale (with one exception) have no application to any court which is effectually in possession of such a power.

The exception is the argument drawn from the alleged defects of the Scotch courts, and it is a mere sophism.

The Scotch courts are bad. The Scotch courts administer law and equity together; therefore, courts which administer law and equity together are bad.

Not only is the argument vicious, but the viciously deduced conclusion is a different proposition from the conclusion aimed at by all the sound arguments which Lord Redesdale employs.

The conclusion deduced from the vicious argument is, that law and equity cannot be properly administered by the same courts.

The conclusion aimed at by the sound arguments is, that equity cannot be properly administered by a court not furnished with powers and machinery like those of the English Courts of Chancery and Exchequer.

This difference, glaring as it is, was not perceived by Lord Redesdale himself (for we cannot suppose that he intended to mislead), and consequently he has not pointed it out. The result is, that among lawyers, and that large class who take their opinions upon such subjects from lawyers, an opinion prevails that Lord Redesdale has shown the project of administering law and equity in the same court to be a plausible but shallow scheme, which cannot bear the test of a learned and searching inquiry.

The next of Lord Mansfield's attempts to introduce equity into a court of law which we shall notice, is the case of Weakly *ex dem.* Yea *v.* Bucknell, Cowp. 473. Sir Wm. Yea had agreed to grant the defendant a lease for 21 years from Lady-day 1758. The defendant had been in possession and paid the rent for 18 years, but no lease was ever granted or demanded by the defendant. On the 13th September 1775, notice in writing was given by the lessor of the plaintiff "to quit at Lady-day 1776." The question was, whether the lessor of the plaintiff was entitled to recover.

Lord Mansfield stopped Mr. Gould, who was about to argue for the defendant, saying there was no occasion to give himself any trouble in so plain a case.

He then adverted to the want of a stamp (a matter foreign to our purpose) and proceeded thus: "It is an agreement for a lease for 21 years; and the defendant has been in possession *eighteen* of them. Then the lessor of the plaintiff gives notice to quit and brings an ejectment. He has agreed for a valuable consideration not to give notice. Shall he then give notice? There might be circumstances perhaps which might let him in to maintain an ejectment. For instance, if he had tendered a lease, and the defendant had refused to execute it, whereby the plaintiff had incurred a loss. But here there is no such circumstance; and if the court were to say this ejectment ought to prevail, it would merely be for the sake of giving the Court of Chancery an opportunity to undo all again. If the lessor of the plaintiff should recover at law, equity would immediately set it right, and he would be obliged to pay the costs of both suits."

This doctrine was not approved of in England, and the contrary seems to have been considered as established in the case of Yea Bart. *v.* Rogers, which was argued before all the Judges in the Exchequer Chamber. A second argument was awarded, but the case was never brought before the judges again. "As I collected at the time (says Mr. East, now Sir E. H East), Lord Loughborough, Chief Justice; Gould, Ashurst and Buller, Justices, were of opinion, that the defendant's equitable title might be set up as a defence to the ejectment. Lord Kenyon, Chief Justice; Eyre, Chief Baron; and Heath, Justice, were decidedly of a different opinion: and with these it is probable that the other judges coincided, though I have no authority for saying so; and no public opinion

opinion was ultimately delivered on the case. But that an equitable title cannot be set up in ejectment has ever since been considered as settled."—See 5 East's Reports, 138 n. (*a*.)

In this manner Lord Mansfield's equitable doctrines respecting agreements for leases were quietly got rid of in England. In Ireland their fate was some what different. There they appear to have been followed by the courts, but to have called forth a very vehement protest from Mr. Justice Kelly, in the case of Lessee of Lord Massey *v*. Touchstone, 1 Scho. and Lef. 67 n. (*c*.)

The action was an ejectment. Lord Massey had agreed " to set the farm of Knockmore to the said Bennet and Touchstone jointly and severally, for the term of three lives to be named by them, at the rent and on the terms mentioned in the within and above proposal (a proposal containing the terms), to commence on the first day of May next. Leases to be perfected at the request of either party."

Lord Carletone, Chief Justice, and the other two judges, relied upon the distinction between a clear and a doubtful equity, holding this to be of the latter sort, and declining to give any opinion on the question, whether if there had been a clear equity for the defendant, it would have availed him.

Mr. Justice Kelly delivered his opinion as follows:—" I could wish that the learned Lord (Lord Yelverton) who delivered his opinion upon this case at Nisi Prius had had an opportunity of considering his own judgment; and I am sure he would now have decided this question in another manner; but he had the authority of a very great judge, and it misled him. Let us consider a moment whether it would not subvert all the rules of discrimination between law and equity, if we were to say that this verdict ought to stand. Lord Carleton, with his usual cautious discretion, has declined entering into a consideration of the authorities on which the argument is founded; but I will do so. For the very first time I ever read that case of Yea *v*. Bucknell, in Cowper, I was astonished at it, and saw that it would be a decision productive of very great mischief. It is admitted in this case that the plaintiff has a clear legal title, and that the defendant has no legal title, but merely an equitable one: then it becomes a question (and till the decision in Yea *v*. Bucknell, it never was a question) whether a legal title should succeed in a court of law against no legal title. I have some experience in these courts, and before Cowper's Reports were published in this country, I will venture to say that no attempt to set up an equitable defence in ejectment, where the plaintiff's title was clear at law, was ever made. See the consequences that follow from the practice. The defendant has an equitable title only, if the plaintiff cannot recover at law, that title will remain a good defence to the defendant for ever, in every ejectment brought by the plaintiff, unless the court of law shall make itself a court of equity; if the defence is good now it will be good 20 years hence: then see the situation of the lessor of the plaintiff. He cannot recover; the defendant holding possession, pays him no rent, names no lives, and yet remains in possession unless the plaintiff goes into a court of equity; was there ever an instance where a man who wanted a specific execution was permitted to drive the person having the legal title, into equity. Where a man, having a legal title, was forced into equity against a person having barely an equitable title. In this very case, for example, see how principles would be subverted. Suppose the defendant were driven into a court of equity, he might go thither with a clear case to entitle him to relief; but if the plaintiff is driven into equity, the defendant lies under no difficulty if he can only prove his article, whereas the plaintiff cannot succeed, for a court of equity will dismiss his bill and tell him 'your title is at law; go into a court of law,' and then it will come to this, that the plaintiff will not be relieved either at law or in equity; at law this article bars him, and having a title at law, he cannot go into equity."

These consequences are certainly of a startling kind, but that they are deducible from any doctrine of Lord Mansfield understood in the sense in which he intended it to be understood, cannot be admitted. Mr. Justice Kelly, indeed, only asserts that they are so deducible 'unless the court of law shall make itself 'a court of equity.' But he must have known perfectly well that Lord Mansfield did intend to this extent to make his court a court of equity, and therefore the elaborate exposition he gives of the absurd consequences which would have followed if Lord Mansfield had meant what he did not mean, was, to say the least, unnecessary.

"If the defence is good now, it will be good 20 years hence." True, if the circumstances remain the same.

"Then see the situation of the lessor of the plaintiff. He cannot recover; the defendant holding possession, pays him no rent, names no lives, and yet remains in possession, unless the plaintiff goes into a court of equity." So says Mr. Justice Kelly. But what would Lord Mansfield have said? We know what he would have said, not only from the reason of the thing, but from what, for the purpose of guarding against this very misapprehension, he actually did say in the case of Yea *v.* Bucknell. "There might be circumstances, perhaps, which might let him in to maintain an ejectment. For instance, if he had tendered a lease, and the defendant had refused to execute it, whereby the plaintiff had incurred a loss." From this it is quite manifest that in the events supposed by Mr. J. Kelly, Lord Mansfield would have said, "The defendant names no lives, and thereby prevents the lessor of the plaintiff from performing his agreement. The defendant pays no rent, and thereby the lessor of the plaintiff has incurred a loss. These circumstances let him in to maintain an ejectment notwithstanding the agreement, which would otherwise have barred him."

This branch of Mr. J. Kelly's attack fails, then, entirely for want of a foundation. We proceed to consider the remaining branch which relates to the supposed incompetence of a court of law to appreciate the equity in such cases.

"I have heard a distiction mentioned (it is in one of the English cases) between a clear equity and a doubtful equity. I would be glad to know how it is possible for a judge, sitting in a court of law, to say that any thing is a clear equity. That is a matter that depends on all the facts of the case, and not on the instrument: a judge in a court of law has nothing to do with equity; he must leave it to its proper tribunal; he cannot form an opinion without going into all the circumstances of the case, and would a court of law permit a defendant to go into all the evidence in the case necessary to show that he had what is called a clear equity? For instance in this case, to prove that all the particulars of this article were performed. See what a scene of evidence you must go into. Further, the judge at Nisi Prius in this case could not say the defendant's title is equitable, unless he lets the plaintiff go into a case to show that it is not; then the plaintiff must come prepared to examine witnesses as to every circumstance in the equitable agreement. Thus the judge makes himself a judge of equity in a court of Nisi Prius, and leaves it to the jury to determine whether the defendant is entitled to a specific execution."

The zeal of this defence of the sacred boundaries between law and equity appears to us much more conspicuous than the discretion. Mr. Justice Kelly seems entirely to have forgotten that the agreement in this case, and all the circumstances of performance and non-performance are beyond all question the proper, legitimate, constitutional subjects of common-law jurisdiction. If the defendant in this case had brought an action against Lord Massey for a breach of his agreement to grant a lease, nothing is more certain than that the judge and jury at Nisi Prius must, in order to say whether there was any breach of the agreement and to estimate the damages, have gone into all that scene of evidence which is here represented as being altogether beyond their power and their competence.

The whole of this argument of Mr. Justice Kelly is a fallacy, based upon the groundless assumption that this agreement, and the performance or non-performance of it, are matters exclusively for the cognizance of courts of equity. He calls it an "equitable agreement." It is not an equitable agreement; it is a strictly legal agreement. All that is equitable in the matter, all that can with any colour of reason be alleged to be beyond the competence of a court of law, is the title to the land arising out of the legal agreement.

The fallacy of Mr. Justice Kelly's argument may be placed in a still more striking light, by considering the foundations of the power assumed by the courts of equity to compel specific performance. Great legal authorities have looked upon the assumption as an unwarrantable intermeddling with things which are the proper subjects of legal cognizance. In the case of Bromage *v.* Jennyng, Roll. Rep. 368, pl. 21, the court of King's Bench granted a prohibition to the Marches of Wales to prevent a suit in equity upon a promise for good consideration to make a lease, because the party might have an action upon the case at common

common law. "And it being urged that this was usually done in Chancery, Coke, Doddridge and Haughton replied, that without doubt a court of equity ought not to do so, for then to what purpose is the action upon the case and covenant? And Coke said, this will subvert the intent of the covenantor, when he intends to have it at his election, either to lose the damages, or to make the lease, whereas here they would compel him to make the lease against his will; and so it is if a man be bound in a bond to infeoff another, he cannot be compelled to make a feoffment; and by Doddridge, if a decree be made that he should make a lease, and he will not do it, there is no other remedy but to imprison his body, and the serjeant who moved it, confessed that he did it against his conscience by reason of the use," and a prohibition was granted accordingly.

The objection here made to the remedy of specific performance, viz. that it renders useless the common-law remedies by action on the case and covenant, is now justly exploded; but that such an objection should ever have been made by great lawyers, shows in a peculiarly forcible manner, how perversely wrong it is to treat an agreement to make a lease as a subject-matter belonging exclusively to courts of equity.

Courts of equity themselves hold no such doctrine as this. They hold doctrines strikingly inconsistent with it. Before Lord Somers's time they would not even entertain a suit for specific performance of an agreement, until the plaintiff had first recovered damages at law for the breach of it. According to Mr. Justice Kelly, courts of law are incompetent to perform the investigation which is necessary to determine whether a party asking for specific performance of an agrement, has a clear equity. According to the Chancellors who preceded Lord Somers, not only are the courts of law competent to this investigation, but they are the only courts which are competent to it. They held this investigation in a court of law to be the indispensable preliminary to their equitable interference.

This doctrine, it is true, has received two considerable modifications in modern times. But taken with these modifications, the doctrine, though a less striking, remains in substance an equally strong argument against Mr. Justice Kelly's views.

The first modification was, that, after Lord Somers's accession to the woolsack, the Chancellors, instead of insisting that the plaintiff should actually recover damages at law before he could claim equitable relief, thought it sufficient to determine themselves whether the plaintiff would be entitled to damages at law. —See the observation of Sir Thomas Clarke, M. R., in the case of Dodsley *v.* Kinnersley, Amb. 406.

The second modification is thus described in argument by the counsel in the case of Williams *v.* Steward, 3 Merivale, 481: "There are cases, undoubtedly, where the court will maintain the bill, notwithstanding some formal objection which would preclude the party at law, as the lapse of time, &c. But the true distinction is, that the subject-matter must be such as would enable the party to recover in damages, but where the subject-matter is otherwise, a court of equity cannot interfere."

We will not undertake to say whether this distinction reconciles all the cases. The subject is discussed by Mr. Fonblanque in a note to the Treatise of Equity, Vol. I. p. 151, note (*c*), and treated by him as doubtful; but all that is necessary for the purpose of our argument seems well established, viz. that where there is a legal agreement, and no formal objection which would preclude the party at law, a court of equity will not decree specific performance unless it is satisfied that the party is, under the circumstances, entitled to damages at law.

That is, the courts of equity hold, that in such cases the question whether there is a clear equity, depends upon the question whether there is a clear title to damages at law.

Mr. Justice Kelly's objections to Lord Mansfield's doctrine, have therefore no validity whatever. The only valid objection to it is, that a court of law has not the power to decree specific performance, nor any equivalent power.

When we say the only valid objection, we mean the only valid objection drawn from considerations of utility and convenience, for with regard to mere technical considerations, it must be admitted that Lord Mansfield was guilty of innovation in this matter. If, however, the nature and history of the action of ejectment, and in particular the nature and history of the execution in it, is considered, it will appear that his doctrines harmonize much better therewith than the doctrines of his predecessors and successors. In the first place, the action of ejectment is

 fictitious,

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fictitious, and it is a general principle, that fictions are only permitted to be used for the purpose of obtaining justice, and not for the purpose of doing injustice. But secondly, the execution in ejectment, so far as the possession of the land is obtained by it, was borrowed by the common lawyers from the courts of equity.

There is some doubt as to the exact period of this change. The following is Sir William Blackstone's account of it: "When the courts of equity began to oblige the ejector to make a specific restitution of the land to the party immediately injured, the courts of law also adopted the same method of doing complete justice; and in the prosecution of a writ of ejectment, introduced a species of remedy not warranted by the original writ, nor prayed by the declaration (which are calculated for damages merely, and are silent as to any restitution); viz. a judgment to recover the term, and a writ of possession thereupon. This method seems to have been settled as early as the reign of Edward 4, though it hath been said to have first begun under Henry 7, because it probably was then first applied to its present principal use, that of trying the title to the land."—Comm. 3. 200.

Now it seems manifest, that if the common lawyers introduced this kind of execution into the law, for the purpose of sparing the party the trouble and expense of two suits instead of one, if they gave possession of the land because they knew that if they did not the courts of equity would; à fortiori ought they to have refused possession to the lessor of the plaintiff in those cases in which they knew that the courts of equity would take it away from him, and restore it to the defendant. When, therefore, Lord Mansfield remarked, "if the court were to say, this ejectment ought to prevail, it would merely be for the sake of giving the Court of Chancery an opportunity to undo all again;" he spoke not only in the spirit of reason and justice, but also in the spirit of those ancient lawyers who first turned the action of ejectment into a means of recovering possession of the land.

The next example we shall give of Lord Mansfield's attempts in this kind, is his using the action for money had and received as a bill in equity, for the purpose of relieving a party from the consequences of a judgment given in an inferior court, which, from defect of jurisdiction, had not been able to go into the whole case. He did this in the case of Moses *v.* Macfarlan, Burr. 1005. We had occasion to advert to this case in the part of this Report which treats of the mode of correcting the errors of inferior courts, and we shall have occasion to advert to it again in the Report which treats of special pleading; but the present is the proper place for bringing to view the main doctrine contained in the case, and the objections which have been made to it. In the course of this examination it will be seen, that the principle of giving to one court jurisdiction over only part of the facts of a case, compelling it to decide upon such imperfect grounds, and then correcting the mischievous effects of its decision by calling in the aid of another court which is empowered to go into the whole case, seemed pregnant with absurdity even to a great English lawyer, not of Lord Mansfield's school, when presented to his mind as a novelty. In this instance too, as in so many others, Lord Mansfield does not appear to have been fully understood.

Macfarlan sued Moses in the court of conscience, as indorser of a small bill of exchange, and recovered against him there, notwithstanding an agreement into which he had entered, that Moses should not be liable to pay the money by reason of his indorsement. The court of conscience refused to receive any evidence in proof of this agreement of indemnity, thinking that they had no power to judge of it, and gave judgment against Moses upon the mere foot of his indorsement (which he himself did not at all dispute), without hearing his witnesses about the agreement that he should not be liable; for the Commissioners held this agreement to be no sufficient bar to the suit in their court.

Lord Mansfield, in giving judgment, said,—"It is most clear that the merits of a judgment can never be overhaled by an original suit either at law or in equity. Till the judgment is set aside or reversed, it is conclusive as to the subject-matter of it to all intents and purposes.

"But the ground of this action is consistent with the judgment of the court of conscience; it admits the Commissioners did right. They decreed upon the indorsement of the notes by the plaintiff, which indorsement is not now disputed. The ground upon which this action proceeds was no defence against that sentence."

At

At the word "consistent," in the above passage, the Reporter says in a note, "Qu. of this? for how can it be legal for any court of law to give judgment for a plaintiff to recover a sum which, as soon as paid, the defendant hath a legal right to recover back again, and that on the very same facts as in the former suit."

Upon this query we observe first, that Lord Mansfield would not have said that the defendant had a legal right, but an equitable right, which in this equitable action might be enforced in a court of law. The defendant had a legal right (Lord Mansfield would probably have said) to recover damages for the breach of the agreement, and an equitable right to recover back the money which, in breach of the agreement, he had been forced to pay; and secondly, that the defendant did not recover it back again on the very same facts as in the former suit. For the fact of the agreement was not before the Commissioners, they having refused to receive evidence of it.

"It is enough for us," Lord Mansfield continues, "that the Commissioners adjudged they had no cognizance of such collateral matter. We cannot correct an error in their proceedings, and ought to suppose what is done by a final jurisdiction to be right. But we think the Commissioners did right in refusing to go into such collateral matter, otherwise by way of defence against a promissory note for 30 *s.* they might go into agreements and transactions of a great value; and if they decreed payment of the note, their judgment might indirectly conclude the balance of a large account."

To this again the Reporter appends a note, containing the following passage: "The above reasoning seems to be contradictory to itself, and is really a contradiction in terms; for it is saying a man has a right, which the moment he has received, the person paying it has a right to recover back, which is a right and no right." The contradiction will vanish, if we say that one party has a legal right and the other an equitable right. The absurdity will remain, it is true, of having legal rights inconsistent with equitable rights, but this Lord Mansfield could not help; and we (much as we object to such arrangements) are nevertheless of opinion, that if there are to be rights inconsistent with equity, and jurisdictions which are to enforce them, equitable rights and jurisdictions to enforce them are a necessary complement of that system.

The opinions of the Reporter are understood to have been shared by a considerable portion of the profession; but the most weighty expression of disapprobation is to be found in the judgment delivered by Lord Chief Justice Eyre, in the case of Philips *v.* Hunter, 2 H. Bl. 414. The arguments used by him are very forcible. They are indeed conclusive, not, as it seems to us, against the equitable relief given by Lord Mansfield under the circumstances of the case, but against any such parcelling out of jurisdiction as renders equitable relief necessary for the purposes of justice, or, in other words, against setting up a court which is prohibited from doing complete justice in the cases which come before it.

"In the argument of the case it is distinctly admitted, that the merits of a judgment can never be overhaled by an original suit either at law or in equity; that till the judgment is set aside or reversed, it is conclusive as to the subject-matter of it, to all intents and purposes. An attempt is made to distinguish between the judgment and the ground of that action, I think not with much success. The proposition that the ground upon which the action proceeded was no defence against the sentence, can hardly be maintained. Suppose it had been a suit in the Court of King's Bench, instead of a court of conscience, would it have been a defence? If it would, why not in a court of conscience? Is there to be a recovery in a court of conscience only to be overturned by an action in the King's Bench? It is said they might go into agreements and transactions of great value; doubtless they might, if those transactions give a defence against a debt of which they have jurisdiction. Is it not necessarily incident? The true objection, if there be an objection, is that such courts ought to have no jurisdiction at all, because the jurisdiction, if they have it, will draw to it cognizance of matters of which they must be very incompetent judges. It may be questionable whether a set-off of a debt arising out of their jurisdiction can be pleaded or used; but that does not draw into question the truth of the proposition, that every thing that goes to the essence of the debt demanded, must of necessity be within their jurisdiction. To say that the merits of a case determined by the Commissioners, where they had jurisdiction, never could be brought in question

over again in any shape whatever, and to say that yet the defendant ought not in justice to keep the money, is not intelligible to me."

* * * * *

"I think the agreement was a good defence in the court of conscience, but if it were otherwise, the recovery there was a breach of the agreement, upon which an action lay; and this was in my judgment the only remedy. Shall the same judgment create a duty for the recoveror upon which he may have debt, and a duty against him upon which an action for money had and received will lie? This goes beyond my comprehension. I believe that judgment did not satisfy Westminster Hall at the time; I never could subscribe to it; it seemed to me to unsettle foundations."

These arguments appear to us very strong to show that a court, which is obliged to decide on part of a case only, and whose decisions must therefore give rise to original suits in other courts, or else work irremediable injustice, ought not to be tolerated; but they do not seem to us to prove, that, when such courts are tolerated, there is any absurdity or inconsistency in having other courts of original jurisdiction to counteract the mischievous effects of their decisions.

An appellate court only interferes where the court before which the matter was first brought, has fallen into error. A court of equity interferes upon a quite different, and in some respects opposite ground. It interferes, because the court before which the matter was first brought, has decided rightly, and in so doing has produced a defect of justice. If the court before which the matter was first brought has not decided rightly, a court of equity would tell a party applying to it, that it had no jurisdiction, that his remedy was by application to the court appointed by the constitution to correct the errors of the one in which he had been litigating. If, indeed, that was one to which the constitution has entrusted final jurisdiction, or whose jurisdiction had in this instance become final, by the efflux of the time limited for appellate proceedings, then the court of equity would be bound to presume that the decision was right, and would be justified in affording its own peculiar relief if the case required it.

These seem to be the principles on which Lord Mansfield proceeded, and that he was right, and Chief Justice Eyre wrong (assuming always that an action for money had and received is, *quoad hoc*, a bill in equity), we think we can prove by the authority of Lord Eldon.

Looking at the question abstractedly, Lord Mansfield thought that the agreement was no defence in the court of conscience, as being beyond its jurisdiction. Chief Justice Eyre thought, that being a defence against the claim made in the court of conscience, the agreement was, for that reason, drawn within its jurisdiction.

Upon this we shall only remark in passing, that, whichever of these high authorities may be right, their difference furnishes us with an argument in the shape of a dilemma against courts of conscience upon the English plan. If Lord Mansfield is right, then such courts must frequently do injustice in the matters which come before them, from defect of jurisdiction. If Chief Justice Eyre is right, then such courts must frequently do injustice, because they are incompetent in point of knowledge to decide the questions thus incidentally, and against the intention of the legislature, drawn within their jurisdiction; and so *quâcunque viâ datâ*, courts of conscience ought to be superseded by the sort of courts recommended in the first part of this Report, to which neither of these objections is applicable.

We return to the subject under discussion.—Lord Mansfield thought, looking at the question abstractedly, that the agreement was no defence in the court of conscience; whether he was right or wrong is immaterial to the present purpose, for he also thought, that as the court of conscience had itself decided that the agreement was no defence because beyond its jurisdiction, and as the court of conscience is a court from which no appeal lies, he was bound to assume the same doctrine for the purposes of this case, whatever might be his opinion of the correctness of that doctrine in the abstract.

In this we can prove by the authority of Lord Eldon, that Lord Mansfield was right. The case of Farquharson *v.* Pitcher, 2 Russell, 81, bears a striking resemblance to that of Moses *v.* Macfarlan in its circumstances, in the arguments adduced and in the decision; and shows, we think, that Lord Eldon, if he could have been brought to admit that an action for money had and received is, for this

purpose

purpose a bill in equity, or, which comes to the same thing, if a bill in equity had been filed against Macfarlan, instead of an action for money had and received, would have done exactly what Lord Mansfield did.

It must be remembered, that Chief Justice Eyre's objection is, that the case of Moses *v.* Macfarlan violates the principle "that the merits of a judgment can never be overhaled by an original suit either at law or in equity."

The facts of the case of Farquharson *v.* Pitcher were shortly as follows:—The plaintiff Farquharson, being resident in Martinique, had demands on Æneas Barkly in London. To enforce payment, his friend W. H. Pitcher suggested that his brother Augustus Pitcher, a solicitor in London, should be employed, and in order that Augustus Pitcher might exert himself with more zeal, it was arranged that the business should be represented to him as to be done on the account of W. H. Pitcher. Accordingly, Farquharson executed a deed by which, for a fictitious consideration, he assigned absolutely to W. H. Pitcher his pecuniary demand on Barkly, and he at the same time executed a power of attorney in his favour. The actual agreement, however, between the parties was, that W. H. Pitcher should be merely a trustee for the plaintiff; and in order to show the true intent of the transaction, W. H. Pitcher signed a memorandum, in which he declared that he had no interest in the property assigned, and that the assignment had been executed only to facilitate the recovery of the demand.

Afterwards Farquharson came to London, and finding that no steps had been taken against Barkly, he informed Augustus Pitcher that he was the party actually interested, and requested him to proceed on his, Farquharson's account. A suit was instituted, and Barkly, by way of compromise, paid the sum of a thousand guineas. Augustus Pitcher received the money on Farquharson's behalf, and made some payments out of it to him or on his account.

Augustus Pitcher having acted as Farquharson's solicitor in various other matters and accounts subsisting between them, brought an action against him. Farquarson obtained from the Court of King's Bench a rule calling on Augustus Pitcher to show cause why his bill of costs should not be taxed, why he should not give credit for all sums of money received by him for or on account of Farquharson, and refund what upon such taxation might appear due from him, &c.

By a subsequent order of the Court of King's Bench, the action and the matters of the former rule were referred to the determination of the Master.

In the proceedings before the Master of the King's Bench, Farquharson contended that he ought to have credit for the whole of the 1,050*l.* which Augustus Pitcher received from Barkly, and he produced the memorandum to show that the assignment was merely a conveyance in trust for himself. But the Master decided that the memorandum, not being under seal, did not legally affect or countervail the deed of assignment which was under seal; that therefore he could not take into his consideration its nature, terms or effect; that he could look only at the legal effect of the deed, under which the sum of 1,050*l.* appeared to have become in law the money of W. H. Pitcher, for a valuable consideration; and consequently, that Augustus Pitcher could not be called upon to give credit for that sum to Farquharson, and should be charged with no more in respect of such sum of 1,050*l.* than the moiety thereof, with which he had charged himself in certain accounts delivered and insisted upon by him, and which the Master treated as settled accounts. The Master made his allocatur upon that principle, and by it he directed Farquharson to pay 233*l.* to Augustus Pitcher.

Although Farquharson had been arrested, no bail bond had been given to the sheriffs, and Pitcher obtained a rule to show cause why an attachment should not issue against the sheriffs of Middlesex, for the sum mentioned in the Master's allocatur.

Farquharson then applied to the Court of King's Bench to review the taxation and allocatur, on the ground that Augustus Pitcher had been charged with no more than a moiety of the 1,050*l.*, and that the deed of assignment had been treated as a valid deed for bonâ fide consideration; but the court coincided with the Master's view of the case, and refused to enter into the merits of the memorandum and declaration of trust.

The bill stated these transactions, and the prayer was, that the plaintiff might be declared entitled in equity to have credit for, and to receive the moiety of the 1,050*l.* not already allowed him in account; that a general and equitable account of receipts and payments, and taxation of untaxed bills of costs might be taken and had between the plaintiff and Augustus Pitcher, and directions given for the

the payment of the balance; that Pitcher might be restrained from prosecuting either the action then pending, or any proceeding by way of attachment or process of contempt against the plaintiff or the sheriffs, for compelling payment of the sum claimed by him under the allocatur; and that the sheriffs might be restrained from paying the money to Pitcher.

The defendant, Augustus Pitcher, filed a general demurrer.

The counsel for the demurrer argues thus: "The Bill is filed in respect of matters which not only are the proper subject of legal cognizance, but have actually been determined by a competent common law authority. The first order of the King's Bench called on the defendant to show cause why he should not give credit for all sums of money received by him for or on account of the plaintiff, and refund what might appear to be due from him; and by the second order, all the matters of the former order are referred to the determination of the Master. That officer has taken the account, and made his determination; his decision was questioned before the court, and the court was of opinion that he had come to a right conclusion. The Court of King's Bench, therefore, has given the plaintiff credit for all the sums which the defendant received on his account.

"The ground on which the bill proceeds, is, that the defendant has not been charged with the sum of 1,050*l.* received by him in respect of the claim which had been assigned to his brother, but which is alleged to have always belonged to the plaintiff. If the fact be so, the Court of King's Bench and the Master have erred; but that a court of law has erred in a matter submitted to its jurisdiction, and with which it was competent to deal, gives no title to equitable relief."

This we see is precisely the argument of Chief Justice Eyre, with regard to the case of Moses *v.* Macfarlan. He contended that the court of conscience had erred in excluding the agreement from their consideration, and that such error could give no title to the equitable relief sought to be obtained by the action for money had and received in the King's Bench.

The counsel for the demurrer then went on to show, upon principle and upon authority, that the Court of King's Bench had erred in excluding the memorandum from their consideration.

Upon principle they contended that "The assignment could have no more operation in a court of law than the memorandum; a court of law could not pay greater regard to the one than to the other; the circumstance that the one was under seal, and that the other was not under seal, was altogether immaterial. There cannot be a legal assignment of a chose in action in contradistinction to an equitable assignment. There can be no assignment of a chose in action, whether under or not under seal, which will enable the assignee to sue for it in a court of law, in his own name, and without the intervention of the assignor. The effect of an assignment at law, as well as in equity, is to operate on the beneficial interest, not on the legal right. There was nothing, therefore, to preclude the plaintiff from having credit for the whole 1,050*l.*, if he had a just title to it."

They then cited several authorities, to show that a court of law will take notice of a trust of a chose in action, and will consider who are the persons beneficially interested, and they concluded with the proposition that "Equity will not interfere to try again what has been already tried, and to retard the execution of the judgment which has been pronounced."

The counsel in support of the bill said, inter alia, "it was decided (perhaps properly) that the consideration of Farquharson's right to the 1,050*l.* could not be gone into there (in the King's Bench). The same party who prevented a court of law from taking cognizance of the matter, now says, you ought to have enforced your claim at law, and are therefore to be shut out from a court of equity.

"It is vain to argue that there are authorities, according to which the Court of King's Bench might have gone into the question which is raised upon this record. It is sufficient that the bill alleges that the court of law did refuse to enter into the consideration of those matters which constitute the case entitling us to equitable relief. It must be assumed, upon the present state of the record, that the plaintiff has not had, has not been able to have, and is not entitled to have, any remedy at law."

This argument, to which it will be seen Lord Eldon assented, is the same as

Lord

Lord Mansfield's in the case of Moses *v.* Macfarlan. His judgment might, without any alteration of the sense, be expressed, mutatis mutandis, in the very words just quoted, or in the very words now to be quoted form Lord Eldon's judgment.

"The demurrer for want of equity must be overruled," he said; "I do not enter into the discussion of the validity of the several authorities which have been cited, to show that a court of law might have given effect to the equity on which the plaintiff relies. This bill states, that the Master of the King's Bench refused to try the equitable right. I therefore look upon the authority of this very case, as stated in the bill, as an answer for the purposes of this case, to the older authorities which have been cited."

The demurrer was, of course, overruled.

We have never heard that this case has been thought to unsettle foundations, and yet, if the case of Moses *v.* Macfarlan is to be considered as overhaling the decision of the court of conscience, this case must also be considered as overhaling the decision of the Court of King's Bench. The truth seems to be, that neither case is open to that imputation, that both are examples of equitable jurisdiction, relieving against the decision of another court upon grounds which were excluded, and must be taken to have been properly excluded from the consideration of that court.

The lesson of jurisprudence to be drawn from this discussion is, that if Lord Mansfield erred in the case of Moses *v.* Macfarlan, he erred only in holding that an action for money had and received was, for the purposes of that case, a bill in equity. That once assumed, the rest of his doctrine follows as a matter of course.

The legislative lesson is, that courts like the Court of King's Bench, ought to be furnished with the means of doing justice in all cases within their jurisdiction, and that courts of conscience, inasmuch as they cannot be furnished with such means without great risk of injustice, ought not to be suffered to exist at all. Both these exigencies are provided for in our scheme.

The case of Bauerman *v.* Radenius (7 T. R. 663), will supply our next topic. It does not seem clear, from the report of the case, on which side the equity and good conscience lay; but assuming, for the sake of argument, that they were with the plaintiff, against whom the court decided upon strictly legal principles, then the sort of obstruction to justice which occurred, would be remedied by the simple provision, which seems to us clearly desirable upon more general grounds, of allowing the parties to the cause to be examined vivâ voce, in the same way as other witnesses. This cannot be done in the English system, either by a court of law or a court of equity. The only way of accomplishing it is the fantastic one of getting a court of equity to order a court of law to do it. And that such a course as this should seem a wise one to such a man as Lord Kenyon, is one of the most remarkable illustrations of the degree to which a servile and uncritical study of the English system, perverts the understandings of those who engage in it. We look upon Lord Kenyon as the most vigorous intellect among the antagonists of Lord Mansfield. He is also the most candid among those antagonists. He does not, like Lord Redesdale, accuse Lord Mansfield of having Scotch prejudices on his mind; but openly avows his own English prejudices as the sources of his reverence for the separate administration of law and equity.

The case of Bauerman *v.* Radenius was an action for delivering goods wet and ill-conditioned.

The principal question at the trial arose on the production by the defendant of a letter from the plaintiffs, who were the shippers of the goods, to Van Dyck & Co., entirely exculpating the defendant from all blame or imputation of negligence or misconduct, and stating that he acted in every respect according to the plaintiff's orders, by stowing the goods under their direction. But it also appeared in the same letter, that Van Dyck & Co. were the persons on whose risk the goods were shipped, that they were the persons really interested in the suit, and had indemnified the plaintiffs, their agents, in whose name they had brought this action. Whereupon it was contended at the trial, in support of the action, that, as it was disclosed that Van Dyck & Co. were the real plaintiffs, and the nominal plaintiffs only their agents, the former ought not to be concluded by the admissions of their agents, proved, too, by a letter without the sanction of an oath, and that therefore this evidence ought to be rejected; but

Lord Kenyon being of a different opinion, the plaintiffs were nonsuited. A motion was afterwards made to set aside the nonsuit, and Lord Kenyon, in the course of his judgment, thus expressed himself:

"I have been in this profession more than 40 years, and have practised both in courts of law and equity; and if it had fallen to my lot to form a system of jurisprudence, whether or not I should have thought it advisable to establish two different courts with different jurisdictions, and governed by different rules, it is not necessary to say. But influenced as I am by certain prejudices that have become inveterate with those who comply with the systems they found established, I find that in these courts proceeding by different rules, a certain combined system of jurisprudence has been framed most beneficial to the people of this country, and which I hope I may be indulged in supposing has never yet been equalled in any other country on earth. Our courts of law only consider legal rights: our courts of equity have other rules, by which they sometimes supersede those legal rules, and in so doing they act most beneficially for the subject. We all know that if the courts of law were to take into their consideration all the jurisdiction belonging to courts of equity, many bad consequences would ensue."

Lord Kenyon then illustrates his opinion by the case of an action for a legacy. We omit the illustration here, because we shall soon have another occasion to quote it. Afterwards he proceeds as follows:—"I exemplify the propriety of keeping the jurisdictions and rules distinct, by one out of a multitude of cases that might be adduced. If the parties in this case had gone into equity, and that court had directed an issue to be tried, they might have modified it in any way they thought proper. One of the rules of a court of equity is, that they cannot decree against the oath of the party himself on the evidence of one witness alone, without other circumstances: but when the point is doubtful, they send it to be tried at law, directing that the answer of the party shall be read on the trial; so they may order that a party shall not set up a legal term on the trial, or that the plaintiff himself should be examined; and when the issue comes from a court of equity, with any of these directions, the courts of law comply with the terms on which it is so directed to be tried. By these means the ends of justice are attained, without making any of the stubborn rules of law stoop to what is supposed to be the substantial justice of each particular case; and it is wiser so to act than to leave it to the judges of the law to relax from those certain and established rules by which they are sworn to decide. If the question that has been made in this case had arisen before Sir M. Hale, or Lords Holt or Hardwicke, I believe it never would have occurred to them, sitting in a court of law, that they could have gone out of the record, and considered third persons as parties in the cause."

After some remarks on the circumstances of the case, Lord Kenyon concludes his judgment in the following words:—"It is my wish and my comfort to stand super vias antiquas: I cannot legislate, but by my industry I can discover what my predecessors have done, and I will servilely tread in their footsteps. I am therefore clearly of opinion on principles of law, that the plaintiffs cannot recover in this action, and we cannot in this case assume the jurisdiction of a court of equity, in order to overrule the rigid rules of law."

There is something bordering on the ludicrous in this statement by Lord Kenyon, of the origin of his opinion and of the length of time he had held it, as if 40 years uninterrupted enjoyment of a prejudice could turn it, by a kind of intellectual prescription, into a sound doctrine. It has, however, the merit of great candour, and seems almost to amount to an avowal that, if instead of a judicial decision on what the law was, he had been called upon as a legislator for a recommendation as to what it ought to be, he would have felt it his duty to shake off an opinion which he cherished principally on account of its inveteracy. We do not mean to say that all Lord Kenyon's expressions imply an attention to this distinction; on the contrary, in the course of his judgment his mind appears to vacillate. Sometimes he seems to be simply declaring the law, avoiding any estimate of its merit or demerit, sometimes to be expressing strong approbation of the law, sometimes to be admitting that nothing can be said in favour of it by an unprejudiced person.

This apparent vacillation imposes considerable difficulty upon those who undertake to criticise him.

That a judge should not legislate, but should discover what his predecessors have done, and tread servilely in their footsteps, is a doctrine which we have no disposition

disposition to combat, at least so long as there is a legislature ready to amend the defects of the law. But when Lord Kenyon says "by these means (the trying actions or issues under the directions of a court of equity) the ends of justice are attained without making any of the stubborn rules of law stoop to what is supposed to be the substantial justice of each particular case, and it is wiser so to act than to leave it to the judges of the law to relax from those certain and established rules by which they are sworn to decide," it is not very easy to understand whether he speaks with reference to the wisdom of a judge, or to the wisdom of a legislator.

If he means only that the judges ought to decide as they are sworn to do, and that they are sworn to decide according to certain established rules of evidence, these are propositions which we are not called upon to dispute. We may remark, however, that the latter is scarcely a true proposition. It is scarcely true, seeing that the rules of evidence have almost all been made by the judges, and from time to time altered by them, to say that they are sworn to decide by those rules as they exist at any given time.

But by the expression "it is wiser so to act than to leave it to the judges of the law to relax from those certain and established rules by which they are sworn to decide," Lord Kenyon seems to mean, that it is wiser in the legislature so to act. Yet if we so understand him, the whole sentence will yield no consistent meaning; for admitting that the judges of the law are sworn to decide on such subjects according to established rules, still they are only sworn to decide according to such rules as are from time to time established by the legislature.

Upon the whole it may be said, that Lord Kenyon's judgment contains no argument which can help to decide the legislative question arising out of this case.

That legislative question does not exactly correspond with the judicial question presented for the decision of the court.

For it ought to be observed, that this case of Bauerman *v.* Radenius differs from the generality of the cases in which courts of law have been asked to relax the rigour of their rules. The real plaintiff against whom those rules operated, did not ask the court to do what good conscience required, or what a court of equity would have directed. He did not ask the court to examine the nominal plaintiff as a witness, but to exclude altogether the admission made by the nominal plaintiff in favour of the defendant, which would clearly be going beyond what good conscience requires; but which is a proceeding much more analogous to the practice of courts of English law. We admit therefore, not only that Lord Kenyon decided according to law, but also that for any thing that appears to the contrary, he adopted the most equitable of the only two courses presented to him.

But in delivering his judgment, so far as he considers the matter in a legislative point of view, he discusses it without reference to this circumstance. He discusses the matter as if the case had stood thus:—

A man has a good cause of action in the name of a third person in a court of law, according to the English system. The general rule is, that the plaintiff in an action at law cannot be examined. But there are acknowledged exceptions to the rule. The party aggrieved in the supposed case alleges that it is within the exception, and the question for a legislator is, shall such a party be allowed to prove to the court within whose cognizance the subject-matter lies, that the case is within the exception, and that the nominal plaintiff ought accordingly to be admitted to give evidence; or shall he be compelled to bring a distinct suit in a distinct court for the purpose of adducing this proof, and getting an order to have the nominal plaintiff admitted as a witness in the court which is to try the cause.

Lord Kenyon's judgment, as we have already remarked, contains no argument in favour of the side of this question to which he appears to lean, and argument appears to us to be superfluous on the other side.

Our opinion and our recommendation go a great deal farther, for we hold that every court should have the power to examine the real plaintiff and defendant, and of course à fortiori every court should have the power to examine a person who is placed in that situation, not on account of his interest in the subject-matter, but on account of some real or supposed convenience of form.

No. 1.
On Civil Judicature in the Presidency Towns.

In treating the last topic we purposely omitted Lord Kenyon's illustration drawn from the effects of suing at law for a legacy, in order that we might introduce it in the separate discussion of that subject on which we are now about to enter. This was Lord Kenyon's favourite instance of the danger of confounding legal and equitable jurisdiction. He refers to it as the most palpable illustration of that doctrine. He refused in the case of Deeks *v.* Strutt (5 T. R. 690) to exercise that jurisdiction in a court of law, stopping the counsel who was to have argued against the jurisdiction, and overruling Lord Mansfield's doctrine on the subject, and he congratulates himself on having made an impression upon Mr. Justice Buller by his arguments. Yet, when the doctrine which he maintained on the subject is considered attentively, it will be found, singularly enough, to be quite unanalogous to the system which Lord Kenyon so much admired. It has moreover been since overruled by his successor Lord Ellenborough, in the case of Doe *dem.* Lord Saye and Sele *v.* Guy (3 East's R. 120), for although one of the judges in that case endeavours so far to explain away Lord Kenyon's doctrine as to make it not inconsistent with Lord Ellenborough's decision, the attempt is eminently unsuccessful. We now proceed to prove all this.

In the case of Bauerman *v.* Radenius, Lord Kenyon says, "To mention only the single instance of legacies being left to women who may have married inadvertently, if a court of law could entertain an action for a legacy, the husband would recover it, and the wife might be left destitute; but if it be necessary in such a case to go into equity, that court will not suffer the husband alone to reap the fruits of the legacy given to the wife; for one of its rules is, that he who asks equity must do equity, and in such a case they will compel the husband to make a provision for the wife before they will suffer him to get the money."—7 T. R. 667.

In another case, The Mayor of Southampton *v.* Graves, he again illustrates the danger of confounding law and equity, by the same instance of an action for a legacy. "A similar mistake was, I think, made (he says), in this court, a few years before I sat here, on another question, where it was decided that an action at law might be maintained for a legacy, partly on the ground that the plaintiff would have recovered it as of course in a court of equity. On its being mentioned to me by the late Mr. Justice Buller, I took the liberty of asking him whether or not he was sure that the court had taken a view of the whole question before they had decided it, reminding him that it is a constant rule in courts of equity, when the husband files a bill for a legacy given to the wife, that (if I may use the expression) they stop it in transitu, if there be no provision for the wife; whereas, if a legacy could be recovered in an action at law, there would be no provision for the wife and family, as the husband would at once take the legacy; that learned judge, whose legal knowledge was universally allowed, immediately admitted the force of the observation. There was indeed a case in Cromwell's time, in which an action at law for a legacy was maintained, but the reason given for that decision was, that there would be a failure of justice if courts of law did not take cognizance of the question, the spiritual courts not being then open; but as soon as those courts resumed their functions, suits of the kind returned into their proper channel; and since I have sat in this place it has been determined that a legacy cannot be recovered in a court of law."—8 T. R. 593.

The case to which Lord Kenyon alludes in the last sentence is, that of Deeks *v.* Strutt, 5 T. R. 690. His judgment in that case is as follows: "The supporting of the present action would be attended with the most pernicious consequences; and I believe that no action till lately (except one in the time of the Commonwealth) for a legacy has been supported in a court of law. The arguments which have of late years been advanced in support of this action, are founded on the supposed justice of the case and the convenience of the parties; but when it is considered in what manner a court of equity interposes in suits for legacies, in taking care that provision is made for the different parties entitled, and what inconvenience, and even ruin, to private families would have ensued from determining that an action can be brought in a court of law for a legacy, I think, that those who have wished to support the action in a common-law court, would hesitate before they came to the conclusion that the action can be maintained. If an action will lie for a legacy, no terms can be imposed on the party who is entitled to recover; and therefore, when the legacy is given to a wife,

wife, the husband would recover at law, and no provision could be made for the wife or family; whereas a court of equity will take care to make some provision for the wife in such a case. But the whole of this admirable system, which has been founded in a court of equity, will fall to the ground if a court of law can enforce the payment of a legacy. I mention these as decisive reasons in my mind against the jurisdiction of the courts of law over this subject; and I know they have influenced those who once entertained an idea that this action could be supported. The only case that I know of where it was said that this action might be maintained, happened in the time of the Commonwealth, but the reason then given was to prevent a failure of justice, the Ecclesiastical Courts being at that time abolished, and the Court of Chancery not having then, nor indeed until the time of Lord C. Nottingham, entertained any jurisdiction over the question of legacies. Therefore, as the arguments of convenience and justice, on which alone it has been thought that this action is maintainable at law, bear strongly against it, and as I find only one case in which it has been supported, and which was decided contrary to all precedent, merely because then the party had no other remedy, I am clearly of opinion that the present action cannot be maintained."

Now this denial of jurisdiction over legacies to courts of law, whatever may be its merit with reference to convenience and utility, is certainly not recommended by any conformity to the English system in general. The mode in which the mischiefs produced by the defective constitution of common-law courts is remedied in the English system, is not by taking away from them jurisdiction which they may exercise mischievously, but by preventing the suitor from applying to them, or from taking advantage of their decisions, that is to say, by injunction from a court of equity.

In all the other cases we have examined, the complaint against the courts of law has been that they have undertaken to do complete justice, or to abstain from doing injustice, thus usurping the functions of equity; but here the complaint is, that they do incomplete justice or positive injustice, that they do something which requires to be set right in equity, which is just what in other cases they are applauded for doing by the admirers of the English system. If, indeed, they had not only exercised jurisdiction in cases of legacies, but had also undertaken to make a husband provide for his wife out of the legacy due to her for which he sues, or had undertaken (as Lord Mansfield seems to have intended) to make the legatee give security to refund upon a deficiency of assets, a case of usurpation on the courts of equity would be made out. But as long as they confine themselves to adjudging the legacy to the legatee, leaving it to the Court of Chancery to interfere by injunction in the case of a husband suing for his wife's legacy, and to make the legatee refund in case the assets are insufficient to pay creditors, they seem only to be acting the part usually assigned to them in that combined system of jurisprudence which, as Lord Kenyon thought, has never yet been equalled in any other country on earth.

Lord Kenyon therefore, in finding fault with the exercise by courts of law of this jurisdiction, appears to be arguing against his own general doctrines, and in favour of ours.

Lord Kenyon is here a witness against himself, and in favour of us. A tribunal with the limited powers of a court of law, cannot do complete justice in the case of a legacy; therefore, according to Lord Kenyon, it has no jurisdiction, or ought to have no jurisdiction over legacies. To this doctrine we entirely assent, only we do not stop there. We push this doctrine to the whole extent of its logical consequences, and hold that, as in all suits within its jurisdiction, a court of law may, from want of adequate powers, find itself compelled to do incomplete justice, or positive injustice, the whole jurisdiction of such courts ought to be taken away, or, in other words, that there ought to be no such courts. And if Lord Kenyon had, in the case of Bauerman *v.* Radenius, applied to the matter then in judgment the principles derived from his illustration, he would have found himself driven to the same conclusion. If, instead of contending that a party in a suit at law fearing to be defeated by an admission made by the nominal plaintiff, ought to go into equity to get that impediment removed, he had contended that courts of law ought not to exercise jurisdiction over any subject in which they might find themselves compelled to do injustice, but ought to leave all such subjects wholly to courts of equity; he would have in effect argued,

just as we argue, that there ought to be no courts of law which are not also courts of equity.

The doctrine therefore of his illustration in the case of Bauerman *v.* Radenius, of his illustration in the case of The Mayor of Southampton *v.* Graves, and of his main argument in the case of Deeks *v.* Strutt, though it appears to us to be excellent doctrine for the guidance of a legislator, sounds strangely in the mouth of an English lawyer, professing his devotion to English principles; and accordingly, the whole doctrine considered as a doctrine of English law, has been swept away by the subsequent case of Doe *dem.* Lord Saye and Sele *v.* Guy, 3 East's Reports, 120.

This last case is, indeed distinguishable from that of Deeks *v.* Strutt, because it was an action to recover a specific chattel against an executor, who had assented to the bequest; whereas in the former case the annuity which was the subject of the action, was payable out of the general funds of the testator. The former case therefore is not overruled by the latter, but the principle on which Lord Kenyon decided the former case, is completely overruled.

The counsel who argued for setting aside the verdict, and entering a nonsuit, "relied on the ground of the decision in Deeks *v.* Strutt, which applied as well to the case of a specific legacy as of a legacy payable out of the general fund; namely, that no action at law lay to recover it against the executor, because a court of law could not in many instances do that justice to the parties concerned as a court of equity were accustomed to do; for the latter would in the case of a legacy to a married woman oblige the husband to make a suitable provision for her, if she were not before sufficiently secured; whereas this court could not impose terms on one who was entitled to recover upon his legal title. The opinion of the judges in that case was delivered generally against supporting an action at law for a legacy, without the distinction now set up. The cases of Atkins *v.* Hill, and Hawkes *v.* Saunders, were indeed cases of express promises; but the reasoning there went the whole length of this case, if it had been well founded; but it was controverted, and considered to be overruled in Deeks *v.* Strutt."

This argument of the counsel for the defendant is absolutely conclusive and unanswerable, unless Lord Kenyon's doctrine is abandoned, and the courts of law would thus have been deprived of a jurisdiction which unquestionably belonged to them. The court, however, thought fit to preserve their jurisdiction, and to abandon Lord Kenyon's doctrine: they did it as tenderly as possible.

Lord Ellenborough says, "General language used by the court in giving their opinions in any case must always be understood with reference to the subject-matter then before them."

This undoubtedly is a sound principle of interpretation, but, unfortunately, Lord Kenyon's doctrine is not capable of being so restricted. Every word that he said against maintaining an action at law for legacies, though we should restrict it to actions for legacies payable out of the general fund, will remain equally applicable in its own nature to actions for specific legacies; and if he had in express terms so restricted his own expressions, he would have done neither more nor less than refute his own argument, by refusing to admit its logical consequences.

Lord Ellenborough, having thus quietly put on one side the doctrine on the excogitation of which Lord Kenyon had so prided himself, proceeds to show what, upon English principles, is the proper business of a court of law, and what of a court of equity, in regard to the subject-matter. "It never could be doubted," he says, "but that at law the interest in any specific thing bequeathed, vests in the legatee upon the assent of the executor. If it should afterwards appear that there is a deficiency of assets to pay creditors, the Court of Chancery will interfere, and make the legatee refund in the proportion required."

Le Blanc, J. said—"It is admitted that, upon the old authorities, there is no doubt of the plaintiffs' right to recover unless they have been overruled by the case of Deeks *v.* Strutt. But that never could have been in the contemplation of the judges there, because it formed a ground of objection with them to the action, that it was a novel attempt to contend that the law would raise an implied assumpsit against an executor, merely from the possession of assets. They thought that it would not; and in discussing that point, they showed the inconvenience which would result from extending the law in that respect further than it had been carried before."

This

This is a very correct account of what the court ought to have done in the case of Deeks *v.* Strutt; but far enough from a correct account of what they actually did. Mr. J. Grose, indeed, who sat in the court when both cases were decided, did take this line, and was perfectly consistent with himself in both decisions. His judgment in the latter case is as follows:—

"The only question in the case of Deeks *v.* Strutt was, whether the law would raise an implied assumpsit to pay the annuity, upon proof of the executor's acknowledgment of assets. I thought it would not," and it is quite true that this was the only question in the case, but the Chief Justice (and Mr. J. Ashurst supported him) chose to decide this question upon the broad ground, that a court of law is incapable of doing justice in anaction for a legacy. "They did not point out," as Le Blanc, J. says, "the inconvenience which would result from extending the law in that respect further than it had been carried before," but vehemently contended against the supposed law being endured to any extent at all. "The whole of this admirable system which has been founded in a court of equity, will fall to the ground, if a court of law can enforce the payment of a legacy." These, as has already been seen, are Lord Kenyon's words, and Mr. J. Ashurst's are not less strong. "Innumerable instances (he says) have occurred, in which the interposition of that court (a court of equity) has proved highly beneficial to private families, by compelling the husband to make an adequate settlement on the wife; but if we were now to determine that an action could be maintained for a legacy, wives and families, in many instances, would be left destitute of any provision."

That Lord Kenyon himself would have repudiated Mr. Justice Le Blanc's explanation and restriction of his doctrine, is placed beyond all doubt by the citation we have made from the case of The Mayor of Southampton *v.* Graves, where, after re-stating in all its breadth the doctrine he had laid down in the case of Deeks *v.* Strutt, he shows, with evident satisfaction, the unlimited conclusion to which that doctrine had led, "since I have sat in this place, it has been determined that a legacy cannot be recovered in a court of law."

This objection to courts of law exercising jurisdiction over legacies, because (to use Lord Kenyon's words) "ruin to private families would have ensued," or because (to use Mr. J. Ashurst's words), "wives and families, in many instances, would be left destitute of any provision," is so thoroughly un-English, that even if it had not been overturned by the case of Doe *dem.* Lord Saye and Sele *v.* Guy, it would have been easy to show its heterogeneousness by comparing it with other parts of the English system. A spiritual court has no more power than a court of law to compel the husband to make a provision for his wife out of a legacy bequeathed to her, yet we never heard it contended that a spiritual court has no jurisdiction in cases of legacy. Ruin and destitution, indeed, might follow from the exercise of this jurisdiction, but they are to be prevented or remedied in the approved method, by a Chancery suit.

"The Court of Chancery will, on a bill filed, grant an injunction to the spiritual court, to stay the husband's proceedings in that court to obtain a legacy given to his wife, because that court cannot compel the husband to make an adequate provision or settlement on his wife, as the Court of Chancery will oblige him to do, before it will permit him to receive the legacy."—Maddock's Chancery, vol. I., 129, and see the cases there cited.

With respect to our new court, its jurisdiction over legacies will of course be limited for the present (as its jurisdiction is on other subjects), to that now exercised by courts of law; but wherever it does exercise jurisdiction, it will exercise all the powers necessary for complete justice.

This examination of the objection which has been made to the jurisdiction of a court of law over legacies, affords perhaps the true explanation of Mr. Justice Buller's recantation. His object and that of Lord Mansfield was to save parties the expense and delay of going into equity to obtain complete justice, wherever the powers of a court of law could be made to accomplish that purpose. He seems to have been satisfied by Lord Kenyon's argument, that this could not be done in the case of a legacy, and therefore yielded upon that point. He yielded, not because he admired that combined system of jurisprudence which Lord Kenyon thought had never been equalled, but precisely because he did not admire it. The moment it was pointed out to him, he felt all the force of the objection, that a court of law, by undertaking to decide upon claims to legacies, would frequently do that which the parties would be driven into equity to remedy.

There is no evidence, as far as we know, that his recantation went beyond the cases in which this sort of inconvenience would have arisen. The only specific instance of his recantation is this instance of an action for a legacy. It is true that in the case of Farquharson *v.* Pitcher, which we have discussed above, Lord Eldon says, "With respect to the common law authorities which have been cited, I may observe, that when I had the honour to sit on the same bench with Mr. Justice Buller, I had a great deal of conversation with him in respect to the equitable doctrines of the Court of King's Bench; and though he at an earlier period of his life, had had some share in introducing equity into law, yet I have his own authority for stating, that he was convinced latterly, that he had been exceedingly mistaken in his notions of the equitable jurisdiction of the courts of law."—Russell's Chancery Reports, II. 86.

These are very large expressions, but in order to judge how far they accurately represent the change in Mr. Justice Buller's mind, it is fit to advert to what Lord Eldon says in the case of Evans *v.* Bicknell, when he is protesting against the equitable doctrines of the Court of King's Bench.

"With regard (he says) to the second proposition of Mr. Justice Buller, that if this (the rule regarding mortgages) had become a rule of property in equity, therefore it ought to be adopted in a court of law, with great deference to the learning and memory of that judge, that appears to me a very hasty proposition." He then proceeds to argue against the proposition, but makes not the slightest allusion to Mr Justice Buller's recantation.

A little further on he says, "It seems to me rather surprising, if I may presume to say so, that Lord Mansfield, who concurred with Mr. Justice Buller in a great many of these equitable principles in a court of law, should not have attended to these distinctions, which perhaps will be found in the very principles on which this court exists."—6 Ves. 183. And again he goes on to illustrate what he has been saying, but still without any allusion to the recantation.

Now, Lord Eldon gave his judgment in the case of Evans *v.* Bicknell in the summer of 1801, very little more than a year after Mr. Justice Buller's death, and when the above-mentioned conversations in respect to the equitable doctrines of the Court of King's Bench, must have been quite fresh in his memory. For these conversations must all have taken place between the summer of 1799, when Lord Eldon was appointed Chief Justice of the Common Pleas, and the Easter vacation of 1800, when Mr. Justice Buller died. And these things being so, it is a moral impossibility, that, if Mr. Justice Buller's recantation of his equitable doctrines had been general, or had been large enough to be available for Lord Eldon's purpose, he should have omitted to take advantage of it. Surely, instead of saying "with great deference to the learning and memory of that judge," the proposition which he laid down, "appears to me a very hasty proposition;" Lord Eldon would have said (if he could have said so with truth) "It not only appears to me a very hasty proposition, but I have Mr. Justice Buller's own authority for stating, that he himself was latterly convinced it was so."

And again, instead of saying, "It seems to me rather surprising, if I may presume to say so, that Lord Mansfield, who concurred with Mr. Justice Buller in a great many of these equitable principles in a court of law, should not have attended to these distinctions;" Lord Eldon would have declared (if he could have done so with truth) that there could be no great presumption in expressing surprise that Lord Mansfield should have concurred with Mr. Justice Buller in neglecting the distinctions between courts of law and courts of equity, seeing that Mr. Justice Buller was latterly himself convinced that he had been exceedingly mistaken in adopting that course.

Lord Eldon gave his judgment in the case of Farquharson *v.* Pitcher in the year 1826, when more than a quanter of a century had elapsed from the date of his conversations with Mr. Justice Buller on law and equity; and we think it is sufficiently evident from what has been said, that he could not then have had an accurate recollection of the extent to which Mr. Justice Buller acknowledged he had been mistaken.

To what extent he did make that acknowledgment may, we think, be inferred from the specific instance of an action for a legacy, which instance was given by Lord Kenyon in the summer of 1800, immediately after Mr. Justice Buller's death, and without any intimation that Lord Kenyon had understood him to have abandoned generally the principles on which he and Lord Mansfield had so long acted.

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If this be so, Mr. Justice Buller is an authority in our favour, not only when he endeavoured to extend the powers of courts of law, so as to enable them to do complete justice in the cases coming before them, but also when, yielding to Lord Kenyon's arguments, he repented of having endeavoured to extend their jurisdiction over cases in which, by the defect of their constitution, they cannot do complete justice. His recantation thus explained, is a most important authority in favour of the proposition, that no court should be suffered to meddle with subjects in which its meddling may produce mischiefs, which another court must be called in to remedy.

The last example we shall give of the attempts of Lord Mansfield and Mr. Justice Buller to introduce equity into suits at law, is their doctrine respecting the setting up of outstanding terms to defeat the lessor of the plaintiff in ejectment. Lord Eldon is here the great antagonist. The case which seems principally to have provoked his indignation is not one in which the court refused to allow an outstanding term to be set up; but one in which the court did allow the term to be set up, because the circumstances were such that a court of equity would have allowed it.

In the case of Goodtitle *v.* Morgan (1 Term Reports, 762), Mr. Justice Buller is reported to have expressed himself thus: "It is an established rule in a court of equity, that a second mortgagee, who has the title-deeds without notice of any prior incumbrance, shall be preferred; because, if a mortgagee lends money upon mortgage without taking the title-deeds, he enables the mortgagor to commit a fraud. If this has become a rule of property in a court of equity, it ought to be adopted in a court of law. Here the defendant took mortgages without inquiring after the title-deeds, the subsequent mortgagee is a purchaser without notice, and as he has taken the title-deeds, he has the better title."

It appears that, according to cases in equity decided after the case at law from which we have been quoting, the rule of equity is not now as stated by Mr. Justice Buller. "The doctrine at last is (so Lord Eldon says in the case of Evans *v.* Bicknell, 6 Ves. 174), that the mere circumstance of parting with the title-deeds, unless there is fraud, concealment, or some such purpose, or some concurrence in such purpose, or that gross negligence that amounts to evidence of a fraudulent intention, is not of itself a sufficient ground to postpone the first mortgagee."

Lord Eldon admits, however, that Mr. Justice Buller had sufficient grounds for supposing the rule to be as he stated it, and admits also, that if the cases of joint tenants, &c., in which, from the nature of the title, the deeds may be honestly out of the possession of the first mortgagee, are excepted, such a rule would avoid a great deal of fraud in mortgage titles.

But it is with Mr. J. Buller's second proposition that we are concerned, and it is against that Lord Eldon directs his attack.

"With regard to the second proposition of Mr. J. Buller, that if this had become a rule of property in equity, therefore it ought to be adopted in a court of law, with great deference to the learning and memory of that judge, that appears to me a very hasty proposition, and the converse undoubtedly will not hold; for it is impossible for this court, upon the principles upon which it acts, to say that whatever is a rule of proceeding at law is of course a rule of proceeding in equity. It may be asserted that it should be the case, but it is impossible it can. For instance: in the case of the mortgagee put in Pasley *v.* Freeman, if the man makes a false declaration, and an action can be maintained upon that, and the principle upon which it can be maintained is, that a court of equity will relieve, the converse ought to hold, that where an action can be maintained, equity should give relief. But is that so? A defendant in this court has the protection arising from his own conscience in a degree in which the law does not affect to give him protection. If he positively, plainly and precisely denies the assertion, and one witness only proves it as positively, clearly and precisely as it is denied, and there is no circumstance attaching credit to the assertion overbalancing the credit due to the denial as a positive denial, a court of equity will not act upon the testimony of that witness. Not so at law. There the defendant is not heard: one witness proves the case; and however strongly the defendant may be inclined to deny it upon oath, there must be a recovery against him.

"It seems to me rather surprising that Lord Mansfield, who concurred with Mr.

Mr. J. Buller in a great many of these equitable principles in a court of law, should not have attended to these distinctions, which perhaps will be found in the very principles upon which this court exists."

The objection here made by Lord Eldon to the attempts of courts of law to assume equitable jurisdiction is, we see, that the latter cannot possibly administer the same kind of justice as the former, because in a court of law the defendant has not the protection arising from his own conscience. As soon as it is enacted that a defendant shall have this benefit in a court of law, Lord Eldon's objection vanishes. But our proposed Act does better than this. The principles involved in Lord Eldon's objection have been themselves objected to, and with great reason; and our Act gives to the new court the power to examine the defendant, and to weigh his testimony, in a manner which obviates all objections.

We now resume our quotation from Lord Eldon, which we have interrupted for the sake of making this remark. He proceeds to apply what he has been saying to the case of a second mortgagee.

He first alludes to the doctrine of the Court of King's Bench as to satisfied terms; he shows the danger which he apprehended would result, and points out that courts of law could not guard against that danger in the same way that courts of equity can, for want of power to examine the defendant.

"Titles to property may possibly be found to be very considerably shaken by the doctrine of the Court of King's Bench as to satisfied terms. The law as to that here is, that a mortgagee having no notice of the first mortgage, if he can get in a satisfied term, would do that which is the true ground of the decision, though it is not put upon that by Mr. Justice Buller; he would, as in conscience he might, get the legal estate; and by virtue of that protect his estate against the first mortgagee, having got a prior title, the conscience being equal between the parties. When once it is said at law, that a satisfied term should not be set up in an ejectment, the whole security of that title is destroyed; and therefore, even with the modern correction which that doctrine has received in the late cases, which is, that you may set up the term though satisfied, and put it as a question to the jury whether an assignment is to be presumed, it seems to me very dangerous between purchasers; and the leaning of the court ought to be that it was not assigned; and I fully concur with Lord Kenyon, that it is not fit for a judge to tell a jury they are to presume a term assigned, because it is satisfied; but there ought to be some dealing upon it, or you take from a purchaser the effect of his diligence in having got in the legal estate, to the benefit of which he is entitled. Then suppose the law takes upon itself to decide the question between purchasers upon this subject, can it decide upon the same rules as courts of equity, as upon the question of notice? It will be said upon this doctrine, a court of equity does inquire into this, and it is a rule of property in equity; and therefore ought to be a rule of property at law. But how has it become a rule of property in equity? In equity the first mortgagee may ask the second whether he had notice. If that defendant positively denies notice, and one witness is only produced to the fact of notice, if the denial is as positive as the assertion, and there is nothing more in the case, a court of equity will not take the benefit of the term from the second mortgagee; placing as much reliance on the conscience of the defendant as on the testimony of a single witness, without some circumstance attaching a superior degree of credit to the latter. It is impossible, therefore, that the rule of property can be said to be the same as at law; and if it stands upon different principles, in fact it is perfectly different."

Be it so; but if you give to a court of law the power of examining the defendant, the whole impossibility vanishes. We entirely concur with Lord Eldon, that the want of power to examine the defendant is a great defect in the courts of common law, and prevents them from being fit instruments for doing complete justice in all cases. But we cannot go along with him in thinking, as he apparently did, that as much reliance ought to be placed upon the conscience of a party to the suit answering in writing written questions, with his attorney and counsel instructing him how far he may go towards deceiving the court without laying himself open to an indictment for perjury, as upon the oral testimony of a disinterested witness.

"This rule," says the learned reporter, Mr. Vesey, "considered simply as a general rule of evidence, seems open to observation, 1st, as preferring the evidence of a party; 2dly, upon the obvious defect of written compared with

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oral testimony. It is difficult to determine the balance of inconvenience and danger on the one hand, from permitting in a commercial country the defendant to avail himself of his own oath to a degree in some respects beyond the old wager of law; and on the other, from deciding upon the evidence of a single witness in cases even requiring the utmost accuracy and precision in the proof."

It is no doubt difficult to determine this balance of inconvenience and danger; but it is a difficulty of which the solution ought to be a mere matter of curiosity, as there is not the least necessity for running into either extreme. Only let the legislature say to the judge, "Examine the parties vivâ voce and the one witness, when there happens to be only one; decide what weight is due to the oath, or rather to the testimony of the defendant, as well as to that of the single witness, not by any pre-established standard, but according to the sage advice of the Emperor Adrian, '*ex sententia animi tui*:'" only let the legislature say this, and the difficulty in question becomes of no more practical importance than those which exercised the ingenuity of the schoolmen.

We must now say a few words upon the nature of that protection to purchasers which Lord Eldon accuses the Court of King's Bench of destroying by its refusal to allow the lessor of the plaintiff in ejectment to be defeated by an outstanding satisfied term. Our own opinion on this subject coincides entirely with that expressed by the Commissioners for inquiring into the Law of Real Property, in their Second Report, pp. 10. et seq.

After showing, that the getting in an outstanding term causes expense, delay and difficulties, that the protection thus obtained is; for various reasons, precarious and inadequate; that although the term may protect the purchaser against secret incumbrances, it may yet not give him a marketable title; that the system of protection by terms is a source of danger to purchasers, and a cause of mischief which otherwise would not exist, the Commissioners conclude thus: "If the system of protection by the assignment of terms could be made available in every title, and were not productive of the other evils adverted to, it would still be open to the objection, that it is liable to work injustice; for whenever it comes into operation, its effect is simply to transfer the injurious consequences of fraud from one innocent party to another, and generally to postpone or exclude a person who had by priority in point of time the best equitable claim.

"By this artifical system, legal rights are made to depend on matters foreign to the merits of the case, suits are occasioned by it, in which the question is not between the rightful and the wrongful party, but between two having equal merits; the point to be determined being which party shall be the victim of the fraud of a third party, or of mere misfortune, and the result of which suit depends on a sort of chance. To obtain the accidental advantage of the '*Tabula in naufragio*' (as it is called) very objectionable proceedings may be resorted to, which the law is forced to countenance, as where a man by climbing into an open window, to which he had no lawful access, obtained a deed, the possession of which entitled him to the benefit of the legal estate.

"The system has a tendency in some cases to promote fraud; it may enable a party who has made a settlement or mortgage to defeat it with greater facility; it appears too, that in some instances it induces a system of selfish caution, with an indifference to the just claims of other persons, since some respectable practitioners have avowed, that when an outstanding term can be obtained, they advise their clients to omit the usual inquiries, by which the existence of intermediate incumbrances might be discovered, and to rely upon the legal estate to defeat them."

After this it will perhaps not be thought, that the destruction of the system of protection by outstanding terms would have been an evil so great as to outweigh the general beneficial effects of Lord Mansfield's refusal to permit an equitable title to be defeated by them in ejectment. But it is not quite clear to us, that Lord Mansfield intended to carry his doctrine to the length of destroying that sort of protection, such as it is, which purchasers may derive from outstanding terms. We do not doubt that Lord Mansfield thought, as the Real Property Commissioners think, that the sort of protection in question is open to objection, because "its effect is simply to transfer the injurious consequences of fraud from one innocent party to another, and generally to postpone or exclude a person who had, by priority in point of time, the best equitable claim." We are quite sure that he must have thought that unlawfully climbing into an open window

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window, is not a sort of diligence which the law ought to reward, and it is therefore not impossible that he wished to go the whole length imputed to him in his career of judicial legislation; that he wished to prevent the setting up of an outstanding term in ejectment, as well when the object of setting it up is to take away the fair advantage which one equitable title ought to have over another by priority in point of time, as when the object of setting it up is to defeat an equitable title.

It rather appears to us, however (but upon such a matter we wish to speak with great diffidence), that Lord Mansfield meant to do no more in this than, as in the other reforms which he meditated, to give to the suitors in his court the same measure of justice which they would obtain in a court of equity. In the cases which we have before examined, many expressions of his will have been observed, showing that such was the object which principally occupied his mind. From the judgment in the case of Goodtitle *v.* Morgan, it is clear that Mr. Justice Buller did not intend to destroy the protection of outstanding terms; that he only intended to give as good equity, without aspiring to give better equity, than those courts which in the English system claim the monopoly of that article.

And if this was all that Mr. Justice Buller intended, we may reasonably infer, from the general agreement of his opinions with those of his great master, that Lord Mansfield intended no more. Yet one of the highest equity authorities now living, speaks of him as if his object had been to alter at his pleasure the substantive law of England, instead of to bring about the uniform administration of that substantive law in all courts which are empowered to administer it at all.

The authority we speak of is Sir Edward Sugden. In his "Vendors and Purchasers," he says, "In the same case of Doe *v.* Pegge, Lord Mansfield observed, that 'trusts are a mode of conveyance peculiar to this country. In 'all other countries the person entitled has the right and possession in himself; 'but in England, estates are vested in trustees, on whose death it becomes diffi-'cult to find out their representatives, and the owner cannot get a complete title. 'If it were necessary to take assignments of satisfied terms, terrible inconveni-'ences would ensue from the representatives of the trustees not being to be 'found. Sir Edward Northey's clerk was trustee of near half of the great estates 'in the kingdom. On his death, it was not known who was his heir or repre-'sentative; so that, where a trust-term is a mere matter of form, and the deeds 'mere muniments of another's estate, it shall not be set up against the real 'owner.' It must excite suprise, that Lord Mansfield should have imagined that any rule, whose tendency it was to subvert what was peculiar to this country could long subsist, while the peculiarity itself was allowed to exist. As well might you admit the rule which excludes the half-blood, and yet in the face of contrary evidence, presume that a brother of the half-blood proceeded from the same couple of ancestors as the person last seised. Is the whole system of trusts to be subverted, because sometimes an obscure trustee dies without relations? Or is the legal estate to subsist or not, according to the expense which a re-conveyance may occasion in any given case? This doctrine never could stand the test of an accurate investigation, and has long since been overruled. They, who have best understood the doctrines of equity, have powerfully deprecated their adoption by courts of law."—pp. 421–2.

Lord Mansfield's object was (as our object now is) to make the administration of English law consistent, by assimilating the irrational to the rational portion of it. Yet he is here studiously represented as intent upon altering the law itself, and assuming a dominion over it which no Chancellor ever arrogated to himself.

"As well," says Sir Edward Sugden, "might you admit the rule which excludes the half-blood, and yet, in the face of contrary evidence, presume that a brother of the half-blood proceeded from the same couple of ancestors as the person last seised."

We venture to say there is no similarity between the illustration and the thing illustrated. If the Chancellor would grant an injunction to prevent the more distant relation of the whole blood from depriving the nearer relation of the half blood of the inheritance, or would decree a conveyance from the former to the latter, then, no doubt, Lord Mansfield would have lamented that he should be called upon in a court of law to make a decision against the half-blood,

"merely

"merely for the sake of giving the Court of Chancery an opportunity to undo all again," and would perhaps have refused to do so. But no Chancellor ever did grant such an injunction, or decree such a conveyance.

With respect to the concluding sentence of our quotation from Sir Edward Sugden, "They who have best understood the doctrines of equity, have powerfully deprecated their adoption by courts of law," we presume to remark that, if by "powerfully" is meant "vehemently," and even "passionately," the assertion is undeniable; but if by powerfully is meant "with great force of argument," the assertion seems to us to be disproved by the numerous examples to which we have had occasion to refer in the course of this discussion.

That there is, however, some force of argument in these instances, we have not denied. In the instance now under consideration we have not denied that there is force in Lord Eldon's objection, that "at law the defendant is not heard, one witness proves the case, and however strongly the defendant may be inclined to deny it upon oath, there must be a recovery against him." But this objection does not lie against our scheme, for our new court, as we have already pointed out, is armed with more effectual powers of investigation than any existing court whether of law or equity.

As the effect of setting up an outstanding term in ejectment is to prevent a court of law from exercising jurisdiction over a subject over which it would otherwise have jurisdiction, it will be necessary to add to the draft Act which we have sent up to Government, a proviso, to the effect that whenever a suit in the nature of an action of ejectment is brought in the subordinate civil court, and an outstanding term is set up against equity and good conscience, the court shall give judgment according to equity and good conscience, as if such outstanding term had not been set up.

The only other case we shall adduce is that of Gladstone *v.* Hadwen. In that case it will be seen that four very eminent English judges, Lord Ellenborough, C. J.; Grose J.; Le Blanc J., and Bayley J., distinctly admit the value of the principles for which we are contending, and, feeling themselves in that case unfettered by technical rules, decided upon those principles.

We are almost ashamed to appeal to the authority of great names in support of a doctrine which seems so capable of standing upon its own merits, as that one set of courts should not be compelled to make work for another set by giving decisions which they know that other set will immediately render of no effect. But, as the truth of the doctrine is denied, and great names are cited against it, we have not thought ourselves justified in neglecting that kind of support.

"Lord Ellenborough, C. J., delivered the judgment of the Court. After stating the facts of the case, his Lordship said: The question is whether Sill & Co. had such a property in the bills of exchange, &c. as passed to their assignees. We are of opinion that they had not. In this case bills were obtained by the bankrupt (Sill) under a false pretence of giving the defendant an ample security, by delegating to him a right to hold coffee; whereas the coffee (which was the security pretended to be given) was the property of another person, over which Sill had no control or lien, or if he had, had before pledged it in favour of another creditor. The bills therefore appear to have been obtained by a criminal fraud. It has been argued, indeed, on behalf of the assignees, that the property vested in them under the commission, and in support of the argument it is supposed that, by analogy to cases in the criminal law, the property may be considered as having passed from the defendant to Sill & Co., but if it did, it was under such circumstances as a court of equity, on a bill filed, would have directed the property to be restored. If that be so, we think it would be useless for a court of law to permit that to be recovered which could not be detained one moment. In Scott *v.* Surman* Willes, C. J., says, 'My 'notion is (and that opinion is confirmed by many authorities cited by Mr. Durn- 'ford in a note), that assignees under a commission of bankrupt are not to be 'considered as general assignees of all the real and personal estate of which the 'bankrupt was seised and possessed, as heirs and executors are of the estate 'of their ancestors and testators; but that nothing vests in these assignees, even 'at law, but such real and personal estate of the bankrupt in which he had 'the equitable as well as legal interest, and which is to be applied to the pay- 'ment of the bankrupt's debts. And I found this opinion both on the reason 'and justice of the case, and likewise on the several statutes made concerning bankrupts

* Willes, 402.

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'bankrupts which relate to this point. As to the reason of the case, I rely 'upon the rule concerning circuity of action. For I think it would be absurd 'to say that any thing shall vest in the assignees, for no other purpose but in 'order that there may be a bill in equity brought against them, by which they 'will be obliged to refund and account; and, according to the case of Burdett *v.* 'Willett, will likewise have costs decreed against them; and so the effects of the 'bankrupt, which ought to be applied to the discharge of his debts, will be wasted 'to no purpose whatever.' On these principles, and on the authority of the cases cited, we are of opinion, that the assignees are not entitled to recover this property, which, if they were to recover, a court of equity would compel them to restore; but that the defendant is entitled to retain it."—1 M. and S. 525.

We shall conclude this report by quoting, from Reeves's History of the English Law, an anecdote of Sir Thomas More, which rests upon the excellent authority of Roper.

"Sir Thomas More being informed that the judges had expressed their disapprobation of the injunctions he had granted, caused a docket to be made of every injunction, and the cause of it, which he had granted while he was Chancellor; and inviting all the judges to dine with him in the Council Chamber at Westminster, he introduced the subject after dinner, when, upon full discussion of every one of them, the judges confessed that he could have acted no otherwise. He then offered, that if the judges of every court, to whom it more especially belonged, from their office, to reform the rigour of the law, would upon reasonable consideration, by their discretion, and as he thought, they were in conscience bound, mitigate and temper the rigour of the law, no more injunctions should be granted by him. To this they would make no engagement; upon which he told them, that as they themselves forced him of necessity to issue injunctions to relieve the people's injuries, they could no longer blame him."—Roper's Life of Sir Thomas More, 58, cit. Reeves, 4, 376.

Upon the perusal of this anecdote, the somewhat melancholy reflection naturally suggests itself to the mind, that if the great Chief Justice whose doctrines we have been endeavouring to rescue from unmerited obloquy, and to bring into practice under the sanction of legislative authority, had been contemporary with the great Chancellor, of whom the anecdote is related, and his fellow labourer in the formation of our judicial system, the boasted antagonism of law and equity, which is peculiar to it, would at this day have been altogether forgotten, or would have been remembered only as an antiquated barbarism, scarcely to be explained by the rudeness of the times in which it had its origin.

We submit this our Report for the consideration of your Honour in Council.

(signed) *C. H. Cameron.*
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
15 February 1844.

P. S.—While we were writing this Report, we received a minute from Sir Erskine Perry, and shortly after, a letter from Sir Henry Roper. And just as we had finished the Report, we received a joint letter from Sir Lawrence Peel, Sir John Peter Grant and Sir Henry Wilmot Seton, with a minute of Sir Lawrence Peel annexed.

We have printed these documents, all of which relate to the subject of our Report, in an Appendix; and we beg most earnestly to call the attention of the Supreme Government to them.

We have read them ourselves with extreme satisfaction.

We must not conceal, however, that there is an important difference between the judges of the Supreme Court at this Presidency and ourselves, on the subject of bringing the parties into the presence of the judge at the beginning of the suit, and settling the issues of law and fact, by means of an oral discussion between the parties, assisted by their legal advisers (when they have any), under the superintendence and control of the court.

With this important exception, there is, we believe, no substantial difference between the judges of the Calcutta Court and ourselves.

On the main subject of our Report, the union of equity jurisdiction with common-law jurisdiction, there is certainly no substantial difference, though the

the means by which we have proposed to attain our common object are not exactly the same.

On the logical principles of pleading, considered without reference to the question whether it should be oral or written, we agree with the judges of this Presidency and with Sir Henry Roper. But we are quite of Sir Erskine Perry's opinion as to the superiority of oral over written pleading.

It is scarcely necessary for us to remark, that we concur in what he has said upon the joint administration of law and equity.

We have mentioned in our Report, that we considered anxiously whether it would be better to treat the topic of the incorporation of equity jurisdiction with common-law jurisdiction abstractedly, or by a critical examination of the principal English cases which bear upon the subject, and that we decided upon the latter course.

Perhaps, for the sake of completeness, the topic ought to have been treated in both ways, and what was thus wanting to the completeness of our Report, has here been supplied by Sir Erskine Perry.

In like manner we considered (though we have not mentioned it in our Report) whether we should expose what appear to us to be the inherent defects of the English system, or confine ourselves to that copy of it which we are endeavouring to reform, and in which the unreasonable and extravagant features are exaggerated in consequence of the different jurisdictions known in the English system, being here conferred upon one and the same body of judges.

We adopted the former plan because we desired to go to the very root of the evil, and because in our Report upon a lex loci for British India, we had pointed out that, "in the modification of that system (the English system) which has been introduced into the Indian Presidencies, the anomalous and extravagant features are exaggerated beyond those of the parent institutions.

"That the Chancellor (we observed) should order a man not to apply to the courts of law for his legal rights; that the courts of law should be bound neither to know nor care whether the Chancellor has done so or not; that the Chancellor should not be permitted to hear vivâ voce evidence, but should be obliged to send his suitors to ask the courts of law to do it for him; that the courts of law in their turn should not be permitted to order witnesses to be examined by Commission, but should be obliged to send their suitors to ask the Chancellor to do it for them; these and other things of the same stamp do not look like the productions of political wisdom. We know, in fact, that the only explanation which can be given of them is not to be sought in jurisprudence, but in history.

"But the copy of these things (we added), which has been established in the Presidencies of India, bears still fewer marks of design."

We then went on to show what consequences might result, and do actually result from the system as it exists here, how loudly they call for a remedy, and how easy the remedy is.

We are extremely glad to find the proposition that, "in a court constituted like the Supreme Court, where the same judges preside on all sides of the court, much may be done in the simplification and improvement of a system of equity, which it has not hitherto been found practicable to effect in England," laid down and illustrated by Sir Lawrence Peel in a way which leaves nothing to be desired, and thus supplies what might be thought an omission in our present treatment of the subject.

AN ACT for establishing a Court of Subordinate Civil Jurisdiction in the City of Calcutta. (Revised Draft.)

Legis. Cons. 11 May 1844. No. 6.

N. B.—What is new is printed in Italics. Clauses of the former Draft omitted in this, are printed within brackets in the margin.

WHEREAS it is expedient that as soon as the necessary arrangements can be made, a College of Justice, consisting of the Judges of the Supreme Court at Fort William in Bengal, and of the Judges of the Sudder Dewanny Adawlut, should be erected, for the ultimate decision, as regards India, of appeals from all courts

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courts as well in the city of Calcutta as in the other parts of the Presidency of Bengal, and it is expedient that some new provision should be made for the trial of original suits within the local jurisdiction of the said Supreme Court:

And whereas Her Majesty's Supreme Court of Judicature at Fort William in Bengal is not authorized in civil actions at law to examine the parties to such actions, by reason whereof the truth of the case must sometimes be concealed from the said court, or can only become known to it by means of a bill in equity for a discovery, which is a proceeding unnecessarily dilatory and expensive, and much less efficacious for the manifestation of the truth of the case than examination and cross-examination vivâ voce in open court:

And whereas the procedure in civil actions in the said court is more dilatory and expensive than is necessary for the ends of justice:

[And whereas the jurisdiction of the court of requests for the recovery of small debts in and for the settlement of Fort William, is limited to suits brought for the recovery of such debts.]

And whereas it is expedient that the court which has jurisdiction over the subject-matters of actions at law should have power to make decrees upon such subject-matters, according to equity and good conscience following the law:

[And whereas it is inexpedient that the jurisdiction of the said court of requests should be extended.]

And whereas when a new court, free from the defects above-mentioned, has been established, it will be unnecessary to have any separate jurisdiction for the recovery of small debts;

It is hereby enacted, that from and after the day of the court of requests for the recovery of small debts in and for the settlement of Fort William in Bengal shall be abolished, and that on the said day a court for the exercise of original civil jurisdiction in the city of Calcutta shall be established, and shall be called the Subordinate Civil Court for the City of Calcutta.

II. And it is enacted, that the said Subordinate Civil Court shall consist of as many Commissioners as to the Governor of Bengal shall from time to time seem meet, and that each of the Commissioners sitting separately shall exercise all the jurisdiction and powers herein conferred upon the said Subordinate Civil Court: Provided always, that at least one of the said Commissioners shall be a barrister of not less than five years' standing.

III. And it is enacted, that one of the Commissioners, being a barrister of five years' standing, shall be the Chief Commissioner.

IV. And it is enacted, that each of the Commissioners shall receive such salary as to the Governor-general in Council shall seem meet, respect being had to the qualifications of each.

V. And it is enacted, that the jurisdiction of the said Subordinate Civil Court shall, both as regards the nature of the matter in dispute and the local situation thereof, extend to all matters for which a civil action at law may be brought in Her Majesty's Supreme Court of Judicature: *Provided that whenever a suit in the nature of an action of ejectment is brought in the said Subordinate Civil Court, and an outstanding term is set up against equity and good conscience, the court shall give judgment according to equity and good conscience, as if such outstanding term had not been set up.*

VI. *And it is enacted, that the jurisdiction of the said Subordinate Civil Court* shall, as regards the persons to be subject thereto, extend to all persons inhabiting or seeking a livelihood within the city of Calcutta; and that it shall be lawful for the Governor-general in Council from time to time to extend the local limits of the said jurisdiction, by proclamation to be issued for that purpose.

Former Section VI.

VII. And it is enacted, that the said Subordinate Civil Court shall in every case make such decrees as may be agreeable to equity and good conscience, following such law as the said Supreme Court would have administered, if the matter had been brought before it in an action at law.*

Former Section VII.

VIII. And whereas it is conducive to the good administration of justice, that the respectable part of the public should be associated therein: It is hereby enacted, that the Governor-general in Council may by proclamation order that every or any Commissioner of the said Subordinate Civil Court, shall, in all suits,

* We believe this to be a correct legal description of the decrees which the Supreme Court makes when sitting in equity.

suits, or in any particular class of suits, and in all proceedings therein, or in any particular proceeding therein, sit with one or more jurors.

Former Section VIII.

IX. Provided always, and it is hereby enacted, that the verdict of such juror or jurors shall be only for the information of the conscience of the court.

Former Section IX.

X. And it is enacted, that the manner of commencing a suit in the said Subordinate Civil Court shall be as follows:

1. Each of the Commissioners of the said Subordinate Civil Court shall sit at stated hours for the purpose of receiving plaints.

2. Every plaintiff bringing a suit in the said Subordinate Civil Court shall, except as hereinafter excepted, appear in person before one of the Commissioners, and shall, orally or in writing, lay before such Commissioner the facts which constitute his claim.

3. The excepted cases in which the plaintiff shall be excused from appearing in person for the purpose of making the statement of facts mentioned in the last clause, are the same as the excepted cases specified in clause 15 of this section, but the plaintiff shall in all cases be permitted to make the statement of facts by an agent, provided he deposit in court the sum of rupees.

4. The sum so deposited shall be held as a security for any thing which may be, or which may become due to the defendant, or to the Government, in respect of the matter of the suit, or in respect of the mode of conducting it: if nothing shall so be or become due, the sum shall be repaid to the plaintiff.

5. If the plaintiff lays the facts before the Commissioner orally, the facts, whether stated of his own accord or elicited by examination, shall be reduced into form and written down by the Commissioner, or by an officer of the court under his direction, and shall constitute the plaint.

6. If the plaintiff lays the facts before the Commissioner in writing, the written statement shall be corrected in form by the Commissioner, or by an officer of the court under his direction, if it requires such correction, and in substance, if it in any respect disagrees with the statement of facts elicited by the examination of the plaintiff: subject to such correction the written statement shall constitute the plaint.

7. When the statement of facts constituting the plaint has been made, the Commissioner, if he is of opinion that the plaint does not contain any cause of action against the defendant, or that the defendant, or the matter of the suit, is not within the jurisdiction of the Subordinate Civil Court, shall make a decree accordingly.

8. If the Commissioner is of opinion that the plaint contains a cause of action against the defendant, and that the defendant and the matter of the suit are within the jurisdiction of the Subordinate Civil Court, he shall direct a writ of summons to be issued to the defendant.

9. The writ of summons shall contain a copy of the plaint, and an order to the defendant to appear before the court on a specified day, and to bring with him any documents which he may have in his possession, of which the plaintiff, with the consent of the Commissioner, demands inspection, or which he the defendant may think conducive to his defence, and a list of such witnesses as he supposes may be necessary for his defence.

10. If the plaintiff satisfies the Commissioner that the defendant is likely to withdraw himself from the jurisdiction of the Subordinate Civil Court, the Commissioner may direct a warrant of arrest against the defendant to be issued, together with the writ of summons.

11. If the defendant is arrested on the warrant, he shall be brought with all convenient speed before the Commissioner, who may discharge him from custody if he gives sufficient security for his appearance, or if he deposits a sum which the Commissioner considers under all the circumstances of the case sufficient, or if he satisfies the Commissioner that he does not intend to withdraw himself from the jurisdiction.

12. On every day on which any of the Commissioners shall sit for the purpose of receiving plaints, all the plaints received shall be laid before the chief Commissioner, who will distribute them among all the Commissioners, including himself.

13. In distributing the plaints the chief Commissioner will endeavour to give to all the Commissioners a share of business which will occupy an equal portion of

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of the time of each, and to give to each Commissioner those kinds of suits which he thinks each best qualified to decide.

14. Every plaintiff and defendant in the said Subordinate Civil Court shall appear, except as hereinafter excepted, in person, on the day specified in the writ of summons, and on every other day fixed for their appearance by the Commissioner.

15. A plantiff or defendant may be excused from appearing in person, if ill; if absent from Calcutta; if engaged in the public service; if exempted on account of rank by the regulations from appearing in the courts of the East India Company; if of advanced age; if of the female sex; if there is a co-plaintiff who appears in person; if there is a co-defendant, defending jointly; if not personally cognizant of the matter in dispute.

16. But in all these cases the Commissioner may refuse to hold the party excused from appearing in person, if he is not satisfied that the excuse is made in good faith, and that the matter of the excuse exists in a sufficient degree to justify him in admitting it.

17. Whenever an agent has been admitted in place of a party, such agent shall be permitted to do all the party might have done had he appeared, and shall be liable to be examined and cross-examined in the same manner.

18. And the Commissioner may, if he thinks fit, order that the party excused shall be examined in any way in which a witness may be examined.

19. When the Commissioner has refused to hold any party excused, he may order the agent who makes the excuse to summon the party on whose behalf it is made on a specified day, and adjourn the proceedings to that day, or he may make a decree against such party after examining his agent.

Former Section X.

XI. And it is hereby enacted, that as soon as the plaintiff and defendant are together before the Commissioner to whom the suit has been assigned, he shall proceed to take the pleadings, and settle the demurrers and issues of fact.

Former Section XI.

XII. And it is hereby enacted, that the manner of pleading shall be as follows:

1. The defendant, in answer to questions put by the Commissioner, shall confess or deny each of the material allegations contained in the plaint, and shall state any matter whereby he proposes to avoid the plaintiff's right to a decree arising out of such allegations contained in the plaint, as he has confessed.

2. The defendant may demur if he thinks the plaint states a case insufficient to entitle the plaintiff to a decree.

3. The defendant shall not be precluded from demurring to any matter in the plaint because he has pleaded to it, nor shall he be precluded from pleading to any matter in the plaint because he has demurred to it.

4. The defendant shall not be precluded from denying as many of the allegations in the plaint as he disbelieves.

5. The defendant shall not be preclude from avoiding the plaintiff's right to a decree arising out of any allegations in the plaint which the defendant has confessed, by the statement of as many matters as he believes to be true.

6. The Commissioner, in taking down the pleadings in writing, will take care that pleas shall be kept distinct from demurrers, and that no pleas shall be double.

7. The Commissioner will also take care that the pleadings shall not be argumentative, and shall state matters of fact only, and not evidence of matters of fact, and shall in other respects be such as to lead directly to distinct issues of law or fact, and that each issue shall have as much particularity as conveniently may be.

8. All the above rules of pleading shall be applied, as far as they are capable of such application, to the subsequent stages of the pleadings.

9. If after the demurrers and issues of fact have been settled, a decree can be properly made without further evidence than that of the parties, and without argument on the law or equity and good conscience of the case, the Commissioner will make his decree immediately.

10. The plaintiff and defendant may, through the medium of the Commissioner, cross-examine each other as to any matter affirmed or denied on either side in pleading.

11. If any demurrer results from the pleadings which the Commissioner thinks

thinks fit for argument, he will, after consultation with the parties, fix a day for the argument on it.

12. If any issue of facts results from the pleadings upon which it is necessary to hear evidence, the Commissioner will make a note of the names of the witnesses on both sides, and of the facts which each of them is expected to prove, and the documents which each of them is expected to produce, and will grant such subpœnas and subpœnas duces tecum as appear to him to be necessary for the purposes of justice, and will, after consultation with the parties, fix a day for the taking of evidence.

Former Section XII.

XIII. And it is hereby enacted, that if any Commissioner, not being a barrister, perceives, while he is receiving a plaint, or while he is taking the pleadings, or in any subsequent stage, that the suit is one which in his opinion ought not to proceed before a Commissioner who is not a barrister, he may hand over the suit to the Chief Commissioner, and direct the parties to go before the said Chief Commissioner, who shall proceed with the suit.

Former Section XIII.

XIV. And it is hereby enacted, that if it shall appear to the Commissioner at any stage of the suit, that justice cannot be done without the presence and concurrence of some person not a party to the suit, the Commissioner may summon such person to appear, and may make a decree which shall be binding upon such person, making such order regarding the costs as shall be agreeable to justice.

Former Section XIV.

XV. And it is hereby enacted, that if in the course of a suit the parties shall disagree as to the balance of an account, the Commissioner may direct that the account be referred to an arbitrator nominated by the parties, or, in default of such nomination, to an officer of the court; and such arbitrator or officer will report the amount due on either side, subject to any exceptions, which the Commissioner will hear and decide.

Former Section XV.

XVI. And it is hereby enacted, that in all suits for the breach of a contract, if it shall be made to appear to the Commissioner that the contract may be performed without prejudice to the plaintiff, and that the defendant is able to perform it, the Commissioner may direct a specific performance of the contract, and enforce it by attachment.

Former Section XVI.

XVII. And it is hereby enacted, that the Commissioner in his decree shall order how much of the amount of any fees which may have been paid or be payable to any attorney or barrister, shall be reckoned as costs between party and party; and what other expenses incurred by the parties in prosecuting or defending the suit shall be reckoned as costs between party and party, and shall order in his decree which party shall pay costs to the other, and to what amount.

Former Section XVII.

XVIII. Provided that no fees which may have been paid or be payable to any attorney or barrister shall be reckoned as costs between party and party, unless the Commissioner shall be satisfied that the assistance of such attorney or barrister was reasonably required.

Former Section XVIII.

XIX. And whereas it is expedient that inconsiderate litigation should be discouraged, and that those who sue or defend inconsiderately should contribute towards the expenses of the judicial establishment: It is hereby enacted, that in every suit in the said Subordinate Civil Court, the party or parties against whom the decree is made shall, if plaintiff or plaintiffs, pay a fee equal to of the value claimed in the plaint; and if defendant or defendants, a fee equal to of the value decreed.

Former Section XIX.

XX. Provided that the Commissioner may remit such fee if he shall be satisfied that the party or parties against whom the decree is made had reasonable ground for suing or defending.

Former Section XX.

XXI. And whereas it is expedient that parties to suits who prevaricate or wilfully make false statements should be punished: It is hereby enacted, that whenever the Commissioner is satisfied that any party to a suit in the said Subordinate Civil Court has, by himself or his agent, prevaricated or wilfully made a false statement, he may in his decree impose upon such party a fine not exceeding and in default of payment may order such party to be imprisoned for a period not exceeding

XXII. And

Former Section XXI. XXII. And it is hereby enacted, that the amount of the fees and fines aforesaid shall be paid monthly into the treasury.

Former Section XXII. XXIII. And it is enacted, that the members of the College of Justice, or the majority of them, may from time to time make such rules for the regulation of the proceedings of the said Subordinate Civil Court as to them may seem meet, and as are not inconsistent with any thing in this Act contained; which rules shall be in force from their date, and shall continue in force unless they shall be disallowed by the Governor-general in Council within the space of from their date: provided that such rules shall be laid before the Governor-general in Council within the space of from their date.

Former Section XXIII. XXIV. And it is enacted, that the sheriff of Calcutta shall execute the process of the said Subordinate Civil Court, and shall, in respect to the execution of such process, be subject to the authority of the said Subordinate Civil Court, and shall for his trouble in executing such process receive from the public treasury such remuneration as to the Governor-general in Council shall seem meet.

Former Section XXIV. XXV. Provided that such remuneration shall be proportioned to the quantity of labour imposed upon the said sheriff in each month in the execution of the said process.

Former Section XXV. [Section XXVII.] XXVI. And it is enacted, that any suitor in the said Subordinate Civil Court who shall feel himself aggrieved by any decree thereof, except decrees in such suits as are otherwise provided for in section XXVIII. of this Act, may appeal from such decree to the College of Justice for the Presidencies of Bengal and Agra, established by the Act of the Council of India, No. , subject to such rules as are contained in that Act; or, subject to such rules, may move the said College of Justice for an order to the Subordinate Civil Court to reconsider its decree, or for an order to the said Subordinate Civil Court for a new trial of the facts on which its decree is founded.

Former Section XXVI. XXVII. And it is hereby enacted, that the said College of Justice shall not alter or reverse any decree of the said Subordinate Civil Court, nor grant an order to reconsider any decree of the said Subordinate Civil Court, nor grant an order for a new trial of the facts on which any decree of the said Subordinate Civil Court is founded, if the decree be consistent with the justice, conscience and equity of the case.

Former Section XXVII. [Section XXV.] [Section XXVI.] XXVIII. And it is hereby enacted, that any suitor in the said Subordinate Civil Court who shall feel himself aggrieved by any decree thereof which has been made by a Commissioner who is not a barrister, in a suit for goods sold and delivered, for money lent, for money due for the hire of any personal property, or for wages, in which the value in dispute shall not exceed the sum of 400 rupees, may appeal from such decree to the Chief Commissioner of the said Subordinate Civil Court, subject to the same rules, as nearly as may be, as the parties appealing to the College of Justice under section XXVI. and that the said Chief Commissioner shall in such cases deal with the decree as the said College is directed to deal with the decrees by section XXVII. of this Act.

Former Section XXVIII. XXIX. And whereas, although the several provisions hereinbefore contained for the constitution of the said Subordinate Civil Court are all copied, more or less exactly, from the provisions for the constitution of the several sorts of courts used in the administration of English law and equity, yet the combination of the said several provisions in one court is new and experimental; and it may happen that a people accustomed to the administration of justice by civil action at law in Her Majesty's Supreme Court, may feel aggrieved if they are deprived thereof; it is hereby declared and enacted, that nothing in this Act contained, shall be construed to affect the jurisdiction now exercised by the said Supreme Court in civil actions at law.

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APPENDIX.

MINUTE on the Supreme Court, Bombay, by Sir *Erskine Perry*, Puisne Justice.

Legis. Cons. 11 May 1844. No. 7.

1. The question upon which the judges have been requested to deliver their opinion by the Law Commissioners, in the 7th and 8th paras. of their letter dated 6th May 1843, may be stated thus: "What number of officers and what amount of salaries would be required to render the Supreme Court efficient in every department, if it were now to be established for the first time?" for the queries as to consolidation of offices, in para. 7, seem all incorporated in the above general inquiry.

2. If the examination of this subject is to be made with reference to the existing procedure of the court, it may be very easily disposed of; for, with the exception of one or two slight consolidations which may, I think, be effected, though with more nominal than real benefit, I conceive that very few beneficial alterations can be made. But as the inquiry touches upon a subject to which I have paid a good deal of attention, and as I feel a strong conviction that the working system of the court, with respect to its efficiency to the public, is by no means well adapted to its purpose; that it is grievously costly both to Government and to suitors; that the expenditure it occasions to the latter is ordinarily so great as to shut out from the court a large portion of bonâ fide claims; that this costliness of procedure is unattended with any corresponding advantage in bringing cases clearly and fully before the judge; and as I believe that these defects are nowise inherent in the system, but are easily removable by the Legislature, I venture to put before the Law Commission, at some length, the grounds on which I have adopted the above conclusions, and the remedies which I conceive are applicable. It will be found that the latter involve a complete answer to the question in the first paragraph.

3. It may be well to commence with a slight sketch of the legal wants of the suitors amenable to the Supreme Court at Bombay, and of the amount of business transacted in it. The population of the island of Bombay is said to consist of above 300,000 souls, and these, with the few hundred Europeans scattered over the Presidency, are all that the court has any jurisdiction over. But it is impossible to measure the amount of law business which may be calculated to arise in a population of this number, by any data which may be furnished from the statistics of a European community of equal extent. In Europe, the great bulk of the population are hewers of wood and drawers of water, day labourers living on their daily hire, and possessed of no funds on which civil controversies can arise; the commercial classes, on the other hand, are composed comparatively of very few individuals. In an Indian trading community, however, and especially in Bombay, it is difficult to conceive, till witnessed, the extent to which mercantile adventures and all kinds of speculation are diffused throughout the masses. Hence arises an infinitude of disputes, and with them an urgent necessity for a simple tribunal, which shall baffle dishonesty and adjust unavoidable controversies.

4. Notwithstanding, however, that these fertile elements of litigation in a Hindoo community are always in operation, the total amount of business in the Supreme Court is very small, as will be seen from the following Tables, which I have drawn up from the books of the court for the last three years.

No. 1.—Number of Causes tried on the Plea Side during the Years 1840, 1841, 1842.

	1840.	1841.	1842.
Defended Causes - - - - -	27	23	42
Undefended ditto - - - - -	7	9	13
TOTAL - - -	34	32	55

No. 2.—Number of Causes tried in the Small Cause Court (Debts under 360 Rupees) during the same Period.

	1840.	1841.	1842.
Defended Causes - - - - -	116	98	87
Undefended ditto - - - - -	527	555	560
TOTAL - - -	643	653	647

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No. 3.—Number of Decrees made in Equity Suits during the same Period.

	1840.	1841.	1842.
Decrees on Argument	7	18	15
Ditto by Consent	6	3	3
TOTAL	13	18	18

5. The whole of the above business, with the exception of the small causes, which occupy from two to three hours every Thursday, is transacted in term time, and consumes about 52 days.*

6. It will be seen, therefore, that the amount of business transacted is exceedingly small, and although the number of suits in the mofussil courts is annually increasing, those in the Supreme Court appear to decline in a like ratio.† If this result were the consequence of an improved state of morality, or of a growing conviction that a speedy remedy could always be insured against injustice, it would be matter for sincere congratulation; but no such Utopian view can be entertained by any one who knows Bombay, or the Indian character generally.

7. The explanation therefore is to be sought elsewhere; and it is to be found, I conceive, in the extreme costliness of proceedings in the court, and in the uncertainty which waits upon decision from the complicated codes of practice in operation; both of these causes being in fact resolvable into one, viz. the defective procedure of the court.

8. The expenses of suing on the plea side of the court are given in the two following Tables, which I have framed from the taxing officer's books on bills taxed during the last three years.

No. 1.—Taxed Costs in Defended Causes.

	1840.	1841.	1842.
	Rs.	*Rs.*	*Rs.*
Plaintiff's Costs	733	592	564
Defendant's ditto	635	430	612
TOTAL *Rs.*	1,368	1,022	1,176

No. 2.—Plaintiff's Taxed Costs in Undefended Causes.

	1840.	1841.	1842.
Ex parte *Rs.*	494	451	400
Cognovits *Rs.*	159	175	233

9. It thus appears that a defended cause in the Supreme Court costs the losing party about 1,200 rupees; that an undefended cause costs about 450 rupees, and that even in causes

* The sittings of each Judge throughout the year amount to about 114 days, thus—

	Days.
Four terms, of 19 days each, but excluding Sundays, Thursdays, alternate Mondays, and Hindoo holidays, amounting to about 13 each	52
Four criminal sessions, of about eight days each, gives to each Judge	16
Two days in chambers per week for small causes, and for Insolvent Court, gives to each, say	46
Total	114

and the total number of sitting days for the public by both Judges conjointly, is 176.

† The number of plaints filed on the common law side of the court have fallen off 20 per cent. during the last three years, as taken on an average of the preceding 10 years.

causes when the defendant confesses the claim, or gives a cognovit on the first opportunity he has to do so, the expenses amount to no less than 189 rupees.*

10. No one I think can look at these sums total without perceiving that they are enormously high, whether taken absolutely or in relation to the costs of litigation in England. For although law proceedings are very expensive there, and so much dreaded, that, as Lord Brougham stated in a debate during the present Session, a wise man sits down under any loss not exceeding 150 *l.* rather than bring his case into court, still the great bulk of the expenses in England consists in the expenses of conveying witnesses to distant courts, and of subsisting them till the trial is over; whereas in India no such item ever enters into a bill of costs, and I think I may safely say, that with the exception of briefs to counsel, nine-tenths of the items in the bills alluded to are referrible to mere useless procedure and needless fees.

11. I offer, as an illustration of the last remark, the bill of costs on suing in the Small Cause Court, which, as I have before observed, entertains a jurisdiction over claims not exceeding 350 rupees; and in order to obviate an objection that lies on the surface, I have no hesitation in stating, that so far as my experience goes, the immense expenditure which attends a trial in the full court, is not rewarded by bringing the case to be tried a whit more satisfactorily before the judges; and, for reasons which I will state hereafter, I believe that the materials for a correct judgment are more frequently supplied in the court of simpler procedure.

Average Costs of Trial on Defended Causes in the Small Cause Court.

	Rs.
Plaintiff's Costs - - - - - -	37
Defendant's ditto - - - - - -	13
TOTAL - - - *Rs.*	50

Costs in Undefended Causes.

	Rs.
Ex parte Causes - - - - - -	41
Cognovits given - - - - - -	12

12. But if the expenses of suing on the common law side are thus high, they are trifling when compared with those on the equity side; and it is perhaps sufficient to say, that as the length of an equity suit when compared with a common law cause may be reckoned by years almost instead of months, so the costs of such suits may be counted in thousands instead of hundreds of rupees, as in the other case.

13. Having thus shown how costly litigation is, and having stated my opinion that it is in great part referrible to defective procedure, I will now proceed to show what that procedure is.

14. When Sir Elijah Impey had the task before him of framing a judicial establishment for Calcutta, as the object was to afford a tribunal for every question that might arise, whether civil or criminal, legal or equitable, of ecclesiastical or admiralty cognizance, the course which he adopted of attributing to the court to be established the different jurisdictions which he had seen parcelled out amongst different tribunals in England, as it was the most obvious, so possibly was the most unobjectionable which he could have pursued. But as the object to be attained in every different department of the court was precisely the same, namely, to bring forward the case in controversy in the clearest and least vexatious manner possible, it might have been imagined that a uniform code of practice directed to that end would have been devised, preserving all the good portions of the methods in operation in the different courts for discovery of the facts, and rejecting all the bad, so as to form one rational simple system, which would have been as satisfactory to the judge to administer, as to the public whom it would have benefited. When it is seen, on the other hand, that the whole of the contradictory complicated, expensive codes of practice of all the different courts in England have been imported bodily into the one Supreme Court of India; that on this side of the court facts may be only elicited by vivâ voce examination, that on another they cannot be brought before the court except in writing; that a party to the cause may not be examined in the case in one instance (at law), that he may be in the same case (in equity); that the decision of the court on the plea side will give a matter in dispute to one party, that the decision of a court of equity will give it to another (in case there are funds sufficient to keep up the litigation); and that all these varying results and perplexing operations are only to be got at by vast expense and vexation; with these facts before our eyes, I say, it is not, I think, an uncharitable conclusion to arrive at, that the temptation of forming a costly establishment, with the number of offices to which these different codes of practice were to afford fees, and of

* These Tables do not, in point of fact, represent the total average cost of litigation, because they are founded upon those bills only which are taxed (probably not more than half of the total number of bills), and the bills of larger amount are not brought into the Master's office at all for taxation, as the attornies are contented to make a small reduction to the party, and so to avoid the taxation. It is impossible, therefore, even for the judge, when he sets about the inquiry, to ascertain what the actual average cost of suing in his own court amounts to.

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of which the founders were to have the patronage, must have completely kept out of view the interests of suitors and of the public.

15. To descend, however, a little more into detail, and show how the practice of the court works. In equity, as is well known, the plaintiff brings his case before the court in what is called a bill, which first of all states his grievance, and then proceeds to charge the defendant with any pretence for resisting the claim which his ingenuity may suggest (for plaintiffs are not limited to the truth of what they advance, and many equity draftsmen defend the introduction of falsehood into this part of the case), and it then proceeds to interrogate the defendant minutely on every species of knowledge which he may have of the matter under dispute. It may be easily conceived, that a document of this nature may run to any length, especially as the fees and costs of those who prepare it depend upon the number of words which can be heaped into it.

16. The first consequence of this mode of commencing the suit is, that the defendant who, fortunately, is bound to make his answer upon oath, requires a long period to answer each interrogatory in the bill, and as his object, even when a bonâ fide litigant, is to tell as little as possible that may injure himself, it usually happens, that when his answer is forthcoming, it evades to give the very information which the plaintiff has sought. Hence arises the necessity for further questioning on the part of the plaintiff, always, be it observed, in writing (amended bill); further fencing on the part of the defendant in answer, and so on backwards and forwards for many months or years, till so much time, trouble and money are expended, that even on the best administration of the system, as in England, it is in evidence* that nine cases out of ten are driven to a compromise.†

17. It follows from this procedure, that even when a party is honestly contesting a suit, from 14 to 18 months are consumed before the case is ripe to be brought before the court (an operation which, in most instances, is merely ancillary to putting the cause into a train for inquiry in the Master's office); but if the defendant is dishonest as well as adverse, there is scarcely any period which can be assigned as a limit to his power of harassing his opponent. An illustration of this may be afforded by the minutes of proceedings in the following case, which fell to my lot to dispose of finally last year, after a litigation of ten years and a half, and which I had to analyse carefully, in order to ascertain where the costs should fall.

Poonja Conja v. *Abdul Rahim Khan.*

18. In 1830 a horsedealer at Bombay died, having left a will, by which he constituted the defendant his executor, who entered upon the testator's property and collected his assets. The plaintiff having a claim against the testator of between 2,000 and 3,000 rupees, applied to the defendant for payment of his debt, and at all events for an account of the testator's assets; but the defendant refused both one and the other. The plaintiff was, therefore, forced to file his bill against the defendant in the Supreme Court for an account and for payment. Three months afterwards the defendant put in his answer, and admitting the plaintiff's claim, alleged that he had no assets of the testator, &c. &c.

This answer, which was clearly insufficient, in withholding important information, was excepted to; and, on argument, a further answer was ordered. On the second answer being put in with the information in question, a clue was given to the plaintiff of facts, by which he was enabled to draw an amended bill, putting further inquiries to the defendant "for the purpose of scraping his conscience," to quote the language of an old equity draftsman before the House of Lords; and at the end of more than a year from the commencement of the suit, an answer to the amended bill was put in. This answer enabled the plaintiff to scrape the defendant's conscience once more; and then with further answer, replication, &c. the cause became at issue in about 21 months from the commencement of suit.

Witnesses had then to be examined on each side, and in about two years more the cause was brought into court, when a decree was made referring it to the Master's office to take an account of the estate of the testator come to the hands of the executor, and of the amount due to the plaintiff.

A long litigation of nearly four years took place on these points, in the Master's office, when a report was presented altogether against the defendant. This report was excepted to by the defendant; but all his objections were overruled, and the cause, on further directions, was again referred to the Master for an additional inquiry.

Another long litigation in the Master's office again took place, of nearly three years, when another report was presented, alike adverse to the defendant, who again excepted to it, and again had all his objections overruled; and, finally, in June 1842, a decree on all points raised by the defendant was made against him, when a further controversy was raised by him as to his non-liability to costs, on the ground of being an executor.‡

19. The

* Report of Committee of the House of Lords on additional Vice Chancellors, 1841.

† That is to say, the party having a good case and undoubted claim, is induced to sacrifice a portion, in order to buy off the vexatious opposition of his opponent.

‡ Justinian lays down in one of his edicts, Cod., III. 1. De Judiciis. tit. XIII. that the blame of suits "pœne immortales" lies with the Judge, "hoc etenim judicialis magis esse potestatis, nemo est qui ignoret; nam si ipsi noluerint, nullus tam audax invenitur, qui possit invito judice litem protelare." But the only power which a judge has, in the present English system, of repressing dishonest litigation, consists in the infliction of costs, which often, as in the case in the text, turns out mere "brutum fulmen."

19. The course of procedure in the above case may perhaps be more readily understood by the following list of dates:

1 Dec.	1830	Claim for payment.
4 Jan.	1832	Bill filed.
21 April	1832	Defendant's answer.
17 May	1832	A better answer.
10 Oct.	1832	Amended bill.
1 Feb.	1833	Defendant's answer.
30 May	1833	Amended bill.
20 Aug.	1833	Defendant's answer.
25 Sept.	1833	Replication.
5 Oct.	1833	Rejoinder.
14 Nov.	1835	Cause argued, and reference to Master decreed.
24 July	1839	Master's report made.
8 Aug.	1839	Exceptions by defendant.
23 Sept.	1839	Exceptions overruled, and further reference to Master decreed.
30 May	1842	Master's second report.
10 June	1842	Exceptions by defendant.
27 June	1842	Exceptions overruled.
30 June	1842	Final decree for plaintiff, and defendant cast in costs of suit.

20. If the case above cited had any extraordinary circumstances connected with it, it might be safely passed over as anomalous; but it is not so, it was a mere debtor and creditor controversy, and under a simple well-regulated system of procedure, it ought not to have lasted more than six months. If the plaintiff and defendant had appeared in court on the first day of the suit, it would have been evident that a decree referring to the Master must be made, and three years and a half of litigation would have been saved at once; and if the witnesses had been produced in court on any day or days after the first six months, all the facts on which the case subsequently turned might have been proved, and the same decree made, which it cost ten additional years, under the present practice, to obtain.

21. As I am discussing now merely the initiatory proceedings of a suit which tend to bring the case before the court, I will not touch upon the Master's office, where the cause in its further progress so constantly becomes engulphed; but I have already stated enough to make it apparent, that the ordinary procedure of a court of equity even between bonâ fide litigants, with its machinery of written pleadings and written evidence, necessarily involves an enormous expenditure both of time and money; and that when either of the parties is dishonest or vindictive, he has the power of harassing his opponent, and protracting the suit almost without bounds.

22. In reprobating equity practice, however, so strongly as I do, I by no means wish to have it supposed that I desire to supersede it by that of common law, or to make special pleading the channel for bringing controversies before the court. On the contrary, I think it wholly unsuited to the country. A creature of English lawyers, and arising out of the simple vivâ voce pleadings of suitors at the bar, it has shaped itself at home into perhaps not an ineligible mode of trying certain questions, but wholly with reference to the peculiarity of the tribunal before which it is employed. All the rules of special pleading which have been framed with reference to any definite object, have had in view the separation of the law from the facts, so as to enable the former to be disposed of by a tribunal sitting in one place, and the latter by a different tribunal sitting in another. The facts having to be tried by a jury, who are collected at some trouble and expense from different parts of the country, and who can only be held together for a limited period of time, it naturally became an object to reduce the issues to be tried to the narrowest possible point on which the parties could be content to fight the question. Juries also, being composed of men caught at random, and in whom the accomplishment of reading even was not considered a *sine quâ non*, it became further desirable not to complicate the record, or to bother their brains with more than a single question. Hence the various rules having these objects in view. But it is needless to observe on the total inapplicability of any one of them to a court which combines the provinces of judge and jury, to a court permanently fixed, which has no duties to call it away to private business at a distance, and which therefore may sit *de die in diem*, to dispose of every question that may fairly arise in the case, to a court finally composed of educated lawyers, who, it may be taken for granted, would not object to a party bringing forward his case in a double aspect, *i. e.* in two different forms, when such a course is legitimately founded on the facts. The application of special pleading to the trial of facts in this country, I believe, to be in its results as follows: that often the true point in dispute is not elicited at all; that often the law and the facts are so jumbled up together, that a hasty decision is called for from the judges on the former, and which, after being pronounced, it is too much to expect from the fallibility of human nature, can be easily made to appear wrong to the tribunal who pronounced it. Lastly, that when it does enable cases to be tried on the merits, it condemns the losing party to 1,200 rupees costs; and that even when he does not defend the action at all, it condemns him to 450.

23. I will dismiss this part of the subject, by observing, that an artificial system, like special pleading, when much cultivated by a learned profession, naturally grows up into a soil of science, to which the cultivators of it, both on the bench and at the bar, become attached in all its ramifications and subtleties, so that, in their anxiety to see the system logically carried out, they will be constantly found losing sight of and sacrificing the merits of the case to mere discussions on the forms.

24. The same remarks are almost equally applicable to pleadings in equity; but this natural tendency in the legal mind to aberrations from the main matter of judicial controversy, is peculiarly dangerous in India, when it is impossible that any member of the profession

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fession can attain the same technical dexterity in mere form work as is possessed by special practitioners in the particular calling at home. Every English lawyer in India has to learn the practice of at least one, and very often of three different courts, on his arrival in this country. The common lawyer knows nothing of equity practice, or of that of the spiritual courts. The equity lawyer knows nothing of the latter either, nor of the common law courts, civil or criminal, yet the common law and equity bars furnish exclusively both judges and advocates. It is dangerous, therefore, for such a bench and such a bar to allow themselves to be led into astute reasonings on what possibly may be the practice at home; and the desirableness of having a simple code of their own, so that all their faculties may be directed to the great principles of jurisprudence, becomes more than ever apparent.

25. The question then presents itself, as to what system can be suggested to replace the cumbrous one now existing in the Supreme Court, and which is here alleged to be so vexatious? It appears to me that there are two, both of which, in comparison with the existing system, stand highly recommended by principles of common sense, and by what is of more value in the eyes of many, common experience. The first is that adopted by the Supreme Court at Gibraltar, which, under the late charter of 1830, giving all judicial functions to the establishment there, and referring, like the Indian charter, to the existence of English law, have adopted one simple system of procedure on all sides of the court, ordering that on civil questions, whether legal or equitable, the proceedings shall be by petition, answer or demurrer, that the examination of all witnesses shall be vivâ voce, and that the law proceedings shall go on throughout the year, the terms including a space of eight months.

26. The second system capable of adoption has, by some, been termed the natural system. By it, the pleadings of the parties are, in the first instance, oral, and the task of reducing them to form belongs to the officer of the court. The parties themselves are present before the judge, and are amenable to examination at any stage of the inquiry. This system is, in some degree, the old practice of the common law courts in England, is mainly adopted in all courts erected for the poor who have no money to dispose of in fees, of many modern courts erected in the colonies, of which West Australia may be cited as an instance, and has been acted upon in the Small Cause Court at Bombay for upwards of forty years.

27. Between these two systems, the preference to be given to the latter is based on so many solid reasons, that I do not think they can stand in competition with one another for a moment.

28. The petition and answer system of Gibraltar has uniformity and simplicity to recommend it. Any one can draw a petition. No inveterate forms oppose themselves as obstacles to prevent the judge from finding his way to the facts in the case. Still, it must not be concealed, that this mode of procedure contains within itself all the inherent defects of special and equity pleading. The suitor's story is not told by himself, but by his legal adviser. Hence arises all that large expenditure which we have seen is created before the case is brought into court; an expenditure, in the great majority of cases (those where the defendant does not intend to contest the claim), altogether useless. Hence also arises the imperfect statement of the case, filtering, as it must do, through different channels and languages. Hence the delay and power of vexation which so temptingly offer themselves to defendants, by their ability to call in legal astuteness to assist them; and thus, without a perpetual watchfulness on the part of the judge, all the abuses might spring up which have been shown to occur in the existing systems.

29. On the other hand, none of these objections can be raised against oral pleadings, where the parties come into court in the first instance, and mutually state their case and defence under all the sanctions that publicity, mutual confrontation, and the presence of the judge can inspire.

30. This system was pursued by that very able judge, the late Sir Benjamin Malkin, at Sincapore, as described by him in his letter on the Government Records (dated 16th September 1837), and has been already alluded to in some of the Reports of the Law Commission as desirable to introduce into the mofusil courts. The approximation towards it in the practice of the Small Cause Court at this Presidency, in the adoption of the two main features, examination of the parties, and references of all technical errors in the pleadings to the jeofail or error of the clerk, is so signal in reducing expenses, and bringing the facts of each case to light, that I have no hesitation in pronouncing it by far the most useful portion of the court; and, I believe I am corroborated in this view, by the opinions of the ablest judges who have sat here, as well as by the popularity with which it has always been regarded by the public.

31. As the elements of the suggested new procedure exist, therefore, at Bombay, nothing would be more easy than for the Legislative Council to bring all civil litigation within it. A few enactments, like the following, would, probably, be sufficient to launch the system:

1. All suits shall commence on the personal application of the party to the judge, on oath, if required, and a summons or capias shall thereupon issue.

2. On summons, &c. being served, the parties shall attend before the judge in open court, and if any matter shall appear to be in dispute, a day shall be fixed for the hearing, and the proceedings in the suit regulated.

3. All evidence shall be given vivâ voce, and the parties to the suit shall be examinable, on oath, at any stage of it; but, in certain cases, to be regulated by the judges, the presence of witnesses and parties may be dispensed with, and evidence may be received in a written form.

4. In

4. In every case the court shall decide on the principles of law or equity arising out of the facts, without reference to the form of suit.

5. All cases shall be decided on the merits, or adjourned till further facts can be procured to enable such decision.

32. I am unwilling to take up the time of the Law Commission, by extending this already long paper with details as to how this system could be made applicable to all the civil controversies which come before the Supreme Court, or by pointing out the rules which would have to be framed by the judges, so as to secure—

1. Authentic records of proceedings when necessary.
2. The safe conduct of causes which require length of time for investigation.
3. Application of the machinery of the court, so as to secure the interests of parties during the progress of the suit.
4. Arrangements by which the expense and dilatoriness of the Master's office may be avoided.

33. These important points require great length for discussion, and I only mention them here, to prevent the supposition that I have failed to consider them in recommending the above simple forms of procedure.

34. Having thus given my opinion as to what the practice of the court ought to be, I am now able, satisfactorily to myself, to answer the queries of the Law Commissioners. It will be seen that, according to the plan proposed, more work is thrown upon the judges than has hitherto fallen to their lot, and undoubtedly it enters into my scheme that one of the judges should sit at least four days a week throughout the year. But, as I have shown, that at present not one-third of the judge's time is occupied, and as I can safely say for myself, that a life of idleness in this country has no charms to recommend it, I do not anticipate any objections on this score.

35. These frequent judicial sittings, however, would dispense with a great portion of the work that is now done out of court by the Master, the prothonotary, the examiner and the clerk of the small causes. Whatever judicial business is done by these officers (and they all at present have some to perform) would be much better done, more cheaply done, and more satisfactorily done by the judges in open court; and what is done by these officers in mere routine business would be, for the most part, abrogated by the simple procedure proposed. I conceive therefore that these four different offices might be abolished, or rather coalesced into one.

36. The business of such an officer, who may be called a registrar, would chiefly consist in recording proceedings and in taxing the costs of parties. In court his business would be to attend all the sittings of the judge, to enter in a book the appearances of parties, and to fill up in printed forms their statements and answers, to swear witnesses, to take down evidence, when required, and to note the judgment of the court. Out of court his business would consist of little else than keeping his books in good order, in taxing the costs of parties and practitioners, and occasionally in hearing references from the court that might require privacy, or the leisure and quiet of a private room. I do not rate the attributes for such an office at any high standard; but I think a legal education would be a most desirable qualification, and that the rate of pay should range from 1,500 to 1,800 rupees a month. For such a salary, I conceive, that efficient services for the work required could be obtained.

37. But another standing officer connected with the courts in India is required, not so much for the sake of the court itself, as for the interests of the public which the Government have thought fit, by a very wise institution, to protect; I mean by the functions attributed to the ecclesiastical registrar of taking out administration to the estates of parties who may die in India without relations or friends.

38. The services required from this officer do not necessarily demand a legal education, and the holder of the office has frequently been a layman. But I think it very desirable, that both this office and the preceding one should be held by barristers, and that they should be held conjointly, like the masterships in the Court of Chancery and Queen's Bench, for the following reasons. The duties of an ecclesiastical registrar by no means take up the whole of his time, yet as he holds a very responsible post, demanding pecuniary security, it is expedient that the emoluments should be liberal, so as to secure trustworthiness. But as his time is not fully occupied, his post is one that may be well consolidated with some other. The registrar or master mentioned in para. 36, on the other hand, would have a greater portion of his time fully engaged, and as there is nothing disparate in the duties required from each officer, they might well be appointed as Masters or registrars generally, and arrange between themselves for the discharge of all the duties coming into the office.

39. This last suggestion seems to be corroborated by another view of the case. From the circumstances of this country where health so frequently fails, and change of air becomes necessary, it is certain that the holders of these two offices, however distinct they might be, would often be called upon to assist and act for one another mutually, but the disadvantages of having an acting officer in a post, who comes in merely as a volunteer and without even professing any knowledge of the duties, need not be enlarged upon. On the other hand, if the two offices are consolidated, a degree of responsibility is ensured from both, and also something of emulation to obtain credit in the profession and from the public for an able discharge of duties, which, as may be seen in the case of the Masters in Chancery, is by no means a motive to action to be undervalued.

40. The appointment of two such officers would enable the following offices to be abolished, now held by four gentlemen.

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1. Master in Equity.
2. Prothonotary, and Equity and Admiralty Registrar, and Examiner in Insolvent Court.
3. Clerk of the Small Causes.
4. Ecclesiastical Registrar and Examiner in Equity.

41. Another officer is still required by the court to discharge the functions now performed by the clerk of the Crown, the clerk to the Insolvent Court, and the pauper's attorney, and as these offices are all filled by gentlemen in practice, I think that they may be consolidated into one office, which it might be made worth a practitioner's while to accept on giving up any extraneous practice. The work in each of the offices mentioned is appropriately attorney's work; for although the clerkship of the Crown has been usually filled by a barrister at Bombay, it is generally held by an attorney at home; and I think that an able man from that branch of the profession is better adapted to the office. The office might be termed the clerkship of the court, and I do not think that an efficient occupant of it could be ensured under 1,500 rupees per month.

42. The establishment of the court, therefore, according to the plan proposed, would stand thus:—

Two masters or registrars at 1,800 rupees each	3,600
Clerk of the court	1,500
	Rs. 5,100
Amounting per annum to	*Rs.* 61,200
To which has to be added for the sheriff's salary	4,200
TOTAL	*Rs.* 65,400

43. But as the present salaries payable by Government to the officers of the court only amount to 36,840 rupees, if this long paper is to end by a recommendation of further drains on the treasury in support of the court, I fear that it would meet with but little favour, and it is necessary for me to show that direct advantages would accrue to Government from its adoption, as well as the indirect ones which they would experience in the lessened charges to the public on law proceedings and litigation.

44. It will be seen that the fees payable to the officers of the court amount at present to 84,143 rupees, but this item is probably insignificant when compared with the costs paid by suitors to their attornies for useless procedure; the greater portion of these amounts will be saved by the plan suggested, and on a comparison with the costs of suing by a simple method, such as is used in the Small Cause Court, I conceive that the expenses of litigation will be reduced to one-tenth of the present amount.

45. But although this great benefit to suitors seems attainable, there seems no reason whatever why a portion of the expenses of the court should not be thrown upon them. In countries like England, when the taxation is ramified so as to reach every individual, the support of judicial establishments is the service rendered by Government as the equivalent *quid pro quo*. But, in Bombay, the mass of the population is scarcely taxed at all, a money-making, money-saving community, but, unconnected with land, they can scarcely allege that a single pie of theirs finds its way into the Government coffers. In all fairness, therefore, an amount may be levied from suitors as for the article law, as much as for any other article of which they might stand in need. But a fee of only 10 rupees each on the institution of a suit, would, on the number of causes entered last year, produce 14,400 rupees, and the fee might be raised to 50 rupees without its burden being sensibly felt.

46. In addition to such fund as a means of supporting the court, there would have to be added the commission now levied on the estates of deceased parties, and which finds its way into the pockets of the ecclesiastical registrar and private administrators. If the latter officer is to be paid by Government, such commission would of course be rightly payable to the Government treasury; and if all private commission as now allowed were abolished, I am convinced that the total amount now received by the registrar would accrue to the Government chest, even if the commission were reduced by one-half.

47. The funds applicable to the court would stand thus: therefore,

Salaries now payable	*Rs.* 36,840
Institution fee on suits	14,400
Commission on estates of deceased parties	18,957
	Rs. 70,197
Salaries proposed to be paid	65,400
Balance in favour of Goverment	*Rs.* 4,797

48. Whilst upon this subject, I would venture to suggest, that there is another fund which appears to me to be largely applicable to the maintenance of the court, I mean the unclaimed estates, to the amount of eight lacs of rupees, in the hands of the ecclesiastical registrar.

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A great portion of this fund is of long standing, and may with certainty be predicated as never likely to find a claimant. An Act of the Government, dedicating the interest on the fund to the support of that court which has created and preserved it, seems to be founded on the clearest principles of justice and expedience.

49. I cannot close this long paper without first of all apologizing for the great extent to which it has run, and, secondly, a frank disclosure of the feelings with which I have gone into the inquiry. I beg to assure the Commission then, that I have looked at the question proposed without any reference to the existing interests of the judges, or of the present officers of the court. The former are not indeed likely to be affected by any change, except so far as a little additional work may be thrown upon them, but the latter stand in a different position, I have therefore treated the question unreservedly, and entirely as *res integra*, but I have done so under the firm conviction, that in any change to be made, existing interests will be fully protected by the justice of the Government of the present day. On this point, and on such an inquiry, the duties of the judge are so well and so feelingly expressed by Lord Stowell, that I make no apology for transcribing the passage, which I have had in my mind throughout the whole discussion.

"I trust I need not profess to bring to this discussion at least the dispositions which ought to meet it, an anxiety to attend, on the one hand, to those considerations of public utility, in which the real honour of the court is so deeply involved (for it can have no honour independent of its subservience to public utility); and, on the other hand, to those sentiments of a liberal and even kind justice, which it is bound to feel towards those immediately employed in exercising its functions. It would be a gross dishonesty to lose sight of the public utility from an undue partiality to individuals; but it would be a dishonesty not less base, nor less detestable in the motive, to sacrifice rights which the court is bound to protect, to any pursuit of an unjust, and, therefore, transient popularity."*

Bombay, 3 June 1843. (signed) *E. Perry.*

To the Honourable *C. H. Cameron*, Esq., and the Members of the Law Commission, &c. &c. &c.

Legis. Cons. 11 May 1844. No. 8.

Honourable Sirs, Bombay, 4 August 1843.

I REGRET that ill health and an unusual pressure of business have delayed my reply to your letter respecting the officers of the Supreme Court at Bombay, their fees and emoluments. Sir Erskine Perry, however, has already sent to you an abstract, briefly showing the average annual amount of emoluments received by each officer of the court. We think you should also be furnished with the returns from which that abstract was made out, and accordingly I have the honour to forward them, together with the "contrasted statement of fees" which we received from you, and which has been filled up by the officers of the court here in the manner you requested.

It will be observed, that there are many fees receivable at Calcutta which have no existence at Bombay. In some instances the fees charged at Bombay are higher than at Calcutta, but such fees appear in general to relate to services which, at Bombay, are seldom called for, and considering that the folio at Calcutta contains but 72 words, whilst at Bombay it contains 90 words, it appears to me that, on the whole, the fees at Bombay are much lower than those at Calcutta. In the few instances in which fees of officers of court for particular services are higher at Bombay than at Calcutta, the fees established at the former place may well be reduced. The fees of attornies at Bombay, it seems to me, are in some respects too high, and it is not improbable that Sir Erskine Perry and I may cause them to be reduced without delay.

I am not aware how any consolidation of offices can be effected. Giving a plurality of appointments to one individual can scarcely be called consolidation. Such a measure is sometimes expedient, in order to remunerate a party for devoting his services exclusively to offices in the court; and occasionally two or more appointments are given to one person, or after having been held conjointly, are again severed, with a view to suit the abilities of individuals, and otherwise to promote the public service. Perhaps, by giving the custody of the seal to the prothonotary or some other officer, a reduction in the sealer's fees might be attainable.

Sir Erskine Perry and I perfectly concur in the opinions expressed in his letter to you of the 29th of June, respecting the office of sheriff. I would add, however, that although the high sheriff in this country appears to me to be almost wholly useless, the services rendered by the petty sheriff are obviously indispensable. They could not be obtained from the description of person generally appointed to be high sheriff, but might well be discharged by a person of the same rank in life as that from which the deputy sheriff is usually selected, and such officer might be denominated the sheriff.

I would gladly agree with Sir Erskine Perry in all the particulars contained in the minute which accompanied his letter of the 29th of June, and am fully convinced that the expense of litigation is very great, and ought to be diminished. That expense, Sir Erskine Perry thinks, has occasioned a decrease of business in the Supreme Court, whilst the amount of business in the courts of the East India Company has increased. The supposed decrease of business in the Supreme Court is scarcely established by the schedule of cases heard and actions tried during the years 1840, 1841 and 1842, transmitted to you along with

* Case of Rendsberg, 6 Rob. Adm. Rep. 145.

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with the minute, for according to such schedule the amount of business in the last-mentioned year exceeded the amount of business in either of two preceding years; and it may be added, that during the two terms which have already occurred in the present year, 34 actions have been tried.

I cannot assent to the commonly received doctrine, that the natives of India are of a more litigious character than the rest of mankind, and I believe they are not more litigious than the Irish or Welsh. Where the administration of justice is comparatively certain and equable, rights will be resisted or withheld less frequently than under a more imperfect judicial system, and thus, without having recourse to the difference of expense attendant on litigation in the respective courts, I can well understand why there should be comparatively less business in the Supreme Court than in the courts of the East India Company, if such be indeed the case, and why there should be more litigation in India than in England. My own conviction is, that there is now nearly as much business in the Supreme Court at Bombay, as there has been at any time during the last ten years, and the opinion is upheld by the annexed Schedules, marked (A.) and (B.) which I have received from the prothonotary of the court.

From the records of the court and other documents it may be collected, that on the arrival of Sir Edward West in this country, and at the establishment of the Supreme Court at Bombay, an arrear of supposed wrongs and abuses was brought forward, and in his efforts to right the former and correct the latter, Sir Edward West raised, as was to be expected, a hornet's nest, and his own feelings and those of other judges in turn became excited. The court took cognizance of one or two matters respecting which it had no jurisdiction; but between suits in which the Government was interested, and suits amongst private individuals, the business of the court has never been so great as it was from the time when the court was first established up to the year 1825. And yet at no period was the cost of litigation so great as during that abundance of business. There were then only three or four barristers, and the number of attornies was likewise much too small. The bar thus had a monopoly; every member of it had employment, and I have been assured, and believe, that immediate fees, if not exacted, were necessarily given. At the same time, as the records of the court show, amendments, applications for time, insufficient answers, exceptions and other dilatory and expensive proceedings were multiplied, and the cost of litigation proportionally enhanced. At length a greater number of barristers obtained licenses to practise. There was a struggle for subsistence. The rate of fees fell considerably, and, to the advantage of clients, professional jealousy arose. Thus the expense of litigation was decreased, and yet the amount of business was diminished. This may be accounted for by considering that much of the original arrears may by that time have been disposed of; that the Insolvent Act came into force; that Sir John Grant had for a period shut up the court, and that it was reopened under peculiar circumstances; and latterly, the stagnation in the China trade, and in mercantile affairs in general, must have had considerable effect. Still, as already observed, I believe there is now nearly or quite as much business in the Supreme Court as there has been on an average during the last ten years; and disputes between petty traders and money lenders on a small scale, are, or ought to be, disposed of in that branch of the Supreme Court called the small cause court, and in the court of requests.

But the expense of proceedings in the Supreme Court, properly so called, is great, and should, as far as is practicable, be diminished. The cost of litigation in a great measure arises from its being for the interest of professional men to protract the pleadings, and to multiply incidental proceedings. I have often thought this evil might, in some degree, be remedied by entrusting the framing of pleadings to an officer of the court. Such is the practice, though, in my opinion, very imperfect, in the small cause court at Bombay, but the system might be considerably improved.

It might be advisable to give to parties the option of preparing their own pleadings, providing, perhaps, that no greater costs should thence accrue between party and party than if the pleadings had been framed by the officer, and that professional men should be paid, not in proportion to the seeming work and labour done, or the length and number of the pleadings, but by a fixed sum for each stage of the business. Special pleading, so far as its abuses are concerned, might be discarded, but retained so far as it is essential to conducting logically the altercations of the parties. It seems to me that thus far special pleading is as much suited to this as to any other country; that thus far the rules of pleading are merely conformable to the operations of the mind in the logical management of a dispute, and that, by following any effectual rules for that purpose, law and fact would be necessarily evolved and separated. Unless where the pleadings were very special and unusual, it should be unnecessary for the officer to do more than make a minute or entry in the terms of the marginal notes annexed to pleadings in the books now in the hands of the profession. At present, even on a trial for murder, the officer enters the plea and replication by the mere words "Non cul." "Culprit." Such notes or minutes might afterwards be expanded into the formal pleading at full length if necessary, though it appears to me that such formality should seldom be required, and that even in making up the record, a brief statement of the declaration, bill or libel, concluding with a taliter processum fuit, and the judgment, should in most cases be sufficient.

I greatly doubt whether a judge should be permitted to interfere in the conduct of the suit before it becomes ripe for trial or hearing, otherwise or with any further or other intent than his interposition is at present allowed. Any more extensive interference on his part might tend to bias his mind in an early stage of the suit. Were he to preside at the oral wranglings of the parties, and to superintend the making entries or minutes accordingly by

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way of pleadings, his authoritative position would indeed invest him with coercive power; but through excess of zeal or infirmity of temper, when provoked by tricks and stratagems of suitors, he might have recourse to measures of a severe character, or admissions might in effect be extorted. Any impatience or indolence on his part might also produce much mischief. With respect to all such matters he might exercise due restraint over another, a subordinate officer, more easily than over himself; and a professional officer of the court, possessing ordinary skill and experience, could hardly fail to conduct the allegations, pleadings and other interlocutory proceedings in an efficient manner, especially as he would be subjected to superintendence and control,—important checks, from which the judge in this country would be comparatively or wholly free.

Measures for similar objects, adapted to the conduct of suits in equity, or respecting matters of ecclesiastical or admiralty jurisdiction, might be devised. The interrogating part of the bill might be omitted in the first instance; and if the defendant's answer were to be taken by an officer of the court (the defendant not availing himself of an option to put in his answer by the aid of solicitor and counsel, as under the present system), the officer might orally interrogate the defendant, consistently with the scope and spirit of the bill, and the replies being committed to writing would form the answer. Omissions or defects might be supplied by additions to or amendments of the bill, and by interrogatories, oral or otherwise.

It seems to me that witnesses in suits in equity should be examined orally in court, as in a trial at law. I am aware, however, that opinions of great weight are to the contrary.

Where, in an action at law, a point in equity arises upon the pleadings or evidence, without any surprise to either of the parties, it appears obvious that the court should be empowered to decide it at once.

The above are some of the speculative notions I have at different times entertained upon these subjects. I only enter upon or allude to them now, because these topics have been fully dwelt upon in the copious and able minute of Sir Erskine Perry, and were I wholly silent regarding them, it might appear that he and I differ more widely than is really the case. If it should be intended to effect any radical change in the mode of administering justice in the Supreme Courts in India, it may be expedient to consider such matters more fully, and to enter into details suitable to a new system. At present I am not aware that any such complete innovation is contemplated; and as some persons might consider sweeping alterations of the long established practice in the Supreme Courts equivalent to an abolition of such practice, and as amounting in spirit to a partial abolition of those courts, and to the establishment of new tribunals, it may be doubted whether the Legislative Council can be competent to effect such alterations under 3 & 4 Will. 4, c. 85, ss. 43 and 46, without the sanction of the authorities in England.

The result of such measures as Sir Erskine Perry advocates, and as I have alluded to in this letter, would be, I fear, the annihilation of the bar at each Presidency. At all events, counsel would seldom be employed in any case. Consequently, judges might become arbitrary, and by degrees, perhaps, professionally ignorant; and the due administration of justice would depend much more than even at present is the case in this country, upon the personal characters of those placed upon the bench.

I have, &c.

(signed) *H. Roper.*

To the Honourable *C. H. Cameron*, Honourable *F. Millett*, Honourable *D. Eliott*, and Honourable *H. Borradaile*, Esqrs., Law Commissioners.

Honourable Sirs,

We have the honour to state, in answer to your letter addressed to us, No. 13, of the 27th May 1843, that our opinions on the consolidation of offices in the Supreme Court at this Presidency, and the amount of salaries, are contained in the minute of the Chief Justice, which is annexed to this letter, and that his minute may be considered as embodying the opinions of the judges of this Presidency upon the changes which it would be desirable to introduce in the administration of justice here, which on the equity, ecclesiastical and admiralty sides admits, we think, of great improvement, and is also susceptible of improvement on the plea or common law side. The consideration of these subjects appeared to us to be so intimately connected with the proposed revision of the establishment of the courts, that we need offer no apology for entering upon it in our answer to the letter which you did us the honour to address us. We regret that the absence of the Chief Justice in the spring and summer of last year, and the subsequent pressure of business in the court, have delayed for so long a time our reply to your communication.

We have, &c.

(signed) *Lawrence Peel.*
J. P. Grant.
H. W. Seton.

Court House,
13 February 1844.

No. 1.
On Civil Judicature in the Presidency Towns.

MINUTE of the Chief Justice.

THE amount of the emoluments of the principal officers of the court has been fixed with reference to the emoluments derived from practice at the bar here, which are much higher than at the other Presidencies. A barrister in the Supreme Court here, who has made any advance in his profession, naturally looks to the receipt of a large professional income at an early period. It has been thought of late years by the judges to be desirable, if not essential to the due administration of justice, to obtain in the two principal offices of the court as at present constituted, viz. those of Master in Equity and Registrar, the assistance of gentlemen of the bar in practice, and the salaries and emoluments of these higher officers were fixed in the scheme contained in the letter of the 14th September 1842, from the judges of the Supreme Court at this Presidency to the honourable the President of the Council of India in Council, on a liberal though a reduced scale, proportionate to the emoluments of practising barristers in the court. The emoluments of one of these officers, the registrar, are now wholly derived from his commission as administrator of intestate estates, for which, as it has been before noticed in the judges' letter, the court was not at any time responsible. These are not a burthen on the estate, and the charge on the parties interested is precisely the same as that which falls upon them under non-official administrations. It is, however, desirable, in my opinion, to lessen this charge in both classes of administrations. Upon the present plan of administering equity, the Master is in some mode a judge, and his office is one at once of great importance and of some dignity. If a vacancy occurred in my time whilst this office was on its present footing, I should be very desirous of selecting for it amongst the barristers in practice, the best qualified for such an office of those who would consent to take it. It was with this feeling that a salary so high as 4,000 Company's rupees per month was named in the scheme in conjunction with that office. But it is to be observed, that that was meant as the maximum which the judges should be empowered to offer, and that it would be their duty to propose a smaller salary, if the smaller salary would secure the services of a barrister in practice well qualified for the office. Upon reconsideration of this subject, I am disposed to think that a salary somewhat less than the one proposed in the scheme referred to would enable the court to secure the services of one so qualified. It is difficult to say beforehand what salary would suffice; but I think that a salary of 3,500 Company's rupees per month, or perhaps 3,000, would be sufficient to induce the relinquishment, not of the first practice, but of a moderate practice at the bar. In the scheme before referred to, the union of the taxing office with that of Master was proposed. The judges were not at that time apprized of the objections to this union which were entertained by the profession. The taxation of costs, if delayed by the Master's attention to the proper duties of the Master's office, which would frequently happen, would delay the issuing of execution, to the serious injury of the suitor; and, therefore, this particular change was considered by the judges as not desirable to be adopted. On the death of Mr. Vaughan, the late taxing officer, the judges, with a view to accelerate the abolition of the office of sworn clerk, would have urged Mr. O'Dowda to accept the offices vacant by Mr. Vaughan's death, but for the objection that the appointment of Mr. O'Dowda would have excluded the attornies wholly from the offices of the court. The judges were reluctant to establish such a precedent; and the Chief Justice waited upon the honourable the President of the Council for the purpose of laying before the Government the alteration in their views, and, in a personal communication with him, stated the course which the judges were desirous of pursuing, and informed him of the reasons by which they were influenced. The President of the Council suggested, that the gentleman to be appointed Mr. Vaughan's successor in the taxing office, should be informed that his office was to be held subject to any arrangements that might be effected for consolidating offices and reducing the establishment of the court, and that proposal was acquiesced in; and Mr. Ryan, who being properly qualified for the office, was selected for it amongst the attorneys of the court, in consequence of his loss of the office of sealer, which was abolished on Sir Edward Ryan's resignation of the office of Chief Justice, accepted the office on this distinct understanding. The reduction effected upon his appointment was to the extent of 9,000 Company's rupees per annum. This is the only instance in which any vacancy has occurred since the date of the letter of September 1842, and although the judges then effected a less reduction than they had hoped to do when they addressed that letter to the Government, it must not thence be inferred, that their desire to effect all practicable reductions of the cost of the establishment at the earliest period, has suffered any abatement. The judges have made no further effort to reduce the fees of court, in consequence of the letter referred to not having been replied to by the Government. They are not officially acquainted with the views of the Government relative to the proposal that the Government should permit the reduction of some part of the fees of court of which the Government are now the recipients.

Having given this answer to the general inquiries contained in the letter of the Law Commissioners concerning the further reductions, or steps to further reductions, effected or taken since the date of the letter of September 1842, I proceed to consider some of the proposals in that letter as to changes in the establishment of the court.

I am not sufficiently acquainted with the mode of transacting business in the office of the Accountant-general of the East India Company, to form any opinion whether inconvenience would result here from adopting the practice prevalent at Madras and Bombay. The amount of business in the Supreme Courts at those Presidencies, and the amount of monies in the hands of the accountants-general of those courts is, I believe, considerably less than

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in the Supreme Court of this Presidency. The double machinery now in use seems to be objectionable. The court must have an accountant: the Accountant-general of the Company, if he were the accountant of the court, would be subject to the general jurisdiction of the court over him as its officer. This might be deemed inconvenient. It has been suggested by the Master of our court, that the simplest course would be to retain the office of accountant on its present footing, and to make the Bank of Bengal the bank of the court, in like manner as the Bank of England is the bank of the Court of Chancery. Upon this subject, I expect to receive shortly a report of the Master, which shall be forwarded to you as soon as it reaches me. I think there is no necessity for retaining the offices both of sheriff and deputy sheriff, and that the sheriff's office should be filled by a permanent officer. That officer, though subject to the court, is not, strictly speaking, an officer of the court; and I know not to what office of the court the duties of the sheriff could be assigned. I see no reason why the office of sheriff should not be united to that of coroner. The present coroner is not a lawyer by profession, but he is not by any means uninformed on the subject of law; and I had lately submitted to me some observations of his on his own court, and its legal functions, which showed that he had mastered that branch of the law; and I have no doubt that a person of his intelligence and habits of study would readily qualify himself to discharge the duties of sheriff. In general, however, I think it would be preferable to select a lawyer for the office. If this arrangement took effect, I think that all process out of all courts within the local jurisdiction should be executed under one and the same officer, and issue from one and the same office. Fewer abuses would prevail, and it would be the cheapest mode of executing process. The charges of the office would, probably, be covered by a moderate poundage or fees.

It is necessary that I should preface my plan of reduction, as contained in this letter, by a few remarks on establishments of officers in courts, when confined to their proper functions, and on the union of judicial functions, or of functions the exercise of which has no necessary connection with a court, with the proper functions of such officers. The establishment needed for a court is that of officers having duties of a ministerial character to discharge in the various stages of a suit, as issuing the first process, seeing that it is in the legal form, and has the proper vouchers of its genuineness, and issues under the prescribed checks against abuse, recording its return, filing the proceedings as they go on, attending at the hearing or trial, taking the evidence when essential, entering in proper form the proceedings of the court, taking accounts and conducting inquiries of a protracted nature, which would otherwise unnecessarily occupy the time of the court; and, if taken in court, would materially enhance the expenses of a suit. When the forms of courts are simple, these duties require no great degree of professional learning. Where duties of a judicial or quasi judicial character are assigned to such officers, it is a defect in the system of administration of justice, which is generally owing to the necessity of some such delegation, in consequence of the pressure of business in courts. It seems to me that some of the matters usually referred to the Master might either be decided in court without a reference, or be decided by one of its own members sitting as a judge in chambers. It would make this minute of undue length, if I were now to go into details. I have, however, annexed to this minute some observations on the general improvements of the judicial system here which will serve to illustrate my plan. Next, as to the delegation to the officers of the court of duties not necessarily connected with a court. Of this kind in our court are, first, the official administration of the estates of intestates conferred by command of the Legislature of Great Britain on an officer of the court, the ecclesiastical registrar. Next, the receivership, which commonly falls on an officer of the court by the consent of the parties in a suit; but it is not of compulsory obligation on the parties to select an officer of the court for such purpose; and, lastly, the official trusteeship lately created by an Act of the Indian Legislature. All the duties of these various officers are those of ordinary administrators, ordinary receivers and ordinary trustees, and they have no necessary reference to any suit whatever. In my opinion, it would be the better course to retain the offices, but to disconnect the person discharging them from the court, and to transfer the appointment of him to the Government, and to confine the court establishment to the officers really necessary for the discharge of the ministerial duties before mentioned. I think it is of importance that no offices should exist as connected with the court which are of an administrative character, and have no necessary connection with proceedings in court. It creates false impressions, that officers are superintended in the discharge of such duties by the court, when they are not, and cannot, from the very nature of the case, be so superintended. Should breaches of trust or duty arise in the discharge of such administrative duties, censure would fall upon the court for that which it could not by any vigilance prevent; and, in short, in cases where the court could not judicially interfere, even if it had knowledge of errors committed in the discharge of such duties. I proceed now to state my views as to the establishment of the court, on the assumption that a uniform and simple form of procedure were adopted in the Supreme Court on its Plea, Ecclesiastical and Admiralty sides, and that the business on the Equity side were conducted upon the principles contained in this minute, and in the accompanying observations on the general reformation of the system of equity as here administered.

The office of Master could not be abolished, but its duties would be reduced in importance and difficulty. The Master would have leisure for other duties, and, I think, the best course to adopt would be to assign duties which would interfere as little as possible with his attendance on inquiries in his own office. This officer then would be Master, Accountant and Equity Registrar, executing also the duties now performed by the sworn clerk and ecclesiastical

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ecclesiastical and admiralty registrars, at a salary of 3,000 Company's rupees per month, or thereabouts.

The Prothonotary to be also Clerk of the Papers, Clerk of the Crown, Sealer and Keeper of Records - - - - - - - 2,000 per month.
Taxing Officer, Chief Clerk and sole officer of Insolvent Court, and to be also Attorney for Paupers (this office should be filled always by an attorney) salary - - - - Company's rupees 1,800 per month.

It is possible that some other union than that suggested here might be found more convenient; but, I think, that all the necessary duties of the court, on all its sides, and of the Insolvent Court, may be done by three principal officers, but not by less. The minor establishments of clerks to the judges, interpreters and swearing officers do not, I think, admit of reduction, except that, I think, the salaries of the judges' clerks might be reduced to 500 Company's rupees per month on future vacancies.

The duties of an official administrator are arduous, and it is an office of considerable pecuniary responsibility. Such an officer should either be a lawyer, or he should have ready access to professional advice; the administration of one estate, or of a few, may be conducted, possibly, without a resort to legal aid; but in a multitude of such administrations, a multitude of difficult and embarrassing questions will arise. The charge of the office is properly imposed on the estate, and the extent of it must, of course, be measured by the difficulties and responsibilities of the office. In many countries, the state, by some officer or officers, administers the estates of intestates. If it be deemed preferable that the official administration of assets, the receivership and the official trusteeship, should remain connected with the court, it would be necessary to have one more officer than those named; but as his emoluments would be wholly derived from commissions, the charge to the state would be the same as in the plan now proposed by me, but a reduction of commissions might take place to some extent. The result, in round numbers, of the reductions thus proposed, would be about 60,000 Company's rupees per annum in salaries; and by a lower commission, in the case of the administration of assets, the emoluments of that officer might be reduced, probably, to the extent of 20,000 Company's rupees per annum; but the benefit of this reduction would accrue to the parties whose estates are under the official administration.

The Judges, Sir Edward Ryan, Sir John Peter Grant and Sir Benjamin Malkin, fixed upon four officers in their plan of the final arrangement of the principal offices of the court, as the smallest number consistently with the efficiency of the court on its present system of judicature. By disannexing the official administration, trusteeship and receivership from the court, I think three principal officers would suffice, but not fewer under any system which I consider practicable. I have read Sir Erskine Perry's plan attentively, with a view to the rectification of my own views if erroneous. That plan proceeds upon the supposition, that the judges at Bombay have not more than one-third of their time occupied. This may be the case at Bombay, but here it is not the case. At Calcutta, the terms are four of 28 days each, the sittings four of 14 days each at least, the criminal sessions out of term are three of usually about 10 days each; it frequently happens here that the term business is not concluded within the term, and that the sittings are not sufficient for the despatch of causes set down; in that case the sittings are prolonged, and arguments are taken out of term, and it must be remembered, that there are sittings in chambers out of term throughout the year, twice a week; in addition, there is the work in chambers in preparing judgments, and considering questions that have occupied the attention of the court in term. I am as little favourable to a life of idleness any where as any one can be; the weak state of my health unfortunately sometimes disables me from attending to my business, but unless when attacked and disabled by illness, I give at present every portion of my time to the duties of my office.

The judges have frequently matters referred to them by the Government, who do them the honour to take their opinions on legislative changes, and the Law Commissioners communicate with them on such questions. The judges, as in duty bound, give their first attention to the business of the court, and it too frequently happens that they are forced to delay answering the communications made to them in consequence of the pressure of business. Any plan that assumes that the judges here have time to transact any portion of the duties performed by the officers of the court, except the judicial duties of the Master, which would not, when rightly managed and coming on in the course of the suit, take up much more of their time than is given to the suit at present, would fail in its operation. It is always to be lamented when a judge is forced to give his whole time to sitting in court. It is his duty to render himself as well qualified for the discharge of his duties as his powers will permit; it is his duty to perfect himself in knowledge as far as he can. The eminent men who are appointed to fill the highest judicial offices at home, frequently regret their want of time to keep up their reading. How much more necessity is there here for some continuation of studies, when it is considered that the judges here have to administer ecclesiastical, admiralty, equity and common law, and the law of the Mahomedans and Hindoos, a more extensive range of jurisdiction than falls to any one court in England, except the courts of appellate jurisdiction perhaps, and that they are not, and cannot be selected from the highest ranks in the profession. For my own part, I regret that I have not more time for reading; I am in the habit of reading all the reports of all the courts in England, but I am unable to keep pace with the publication of them. When the judges of this court were applied to, to take part in the decisions of the small cause court, they readily consented, and

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expressed no other fear than that they should not have time to despatch that portion of the business which it was desirable that a professional man should despatch. In the vacation, the time of one of the judges they thought might be constantly given, in term and sittings they thought it would rarely be practicable, and this is still my settled opinion.

To work efficiently the plan suggested by Sir Erskine Perry, a judge should be a man of the very highest powers, and possess a very rare union of good qualities. This is essential, but even this would not ensure its success. It gives the judge a degree of power which I think no judge ought to possess: even the power of saying whether a suit shall be instituted in the first instance or not, since he is to say "whether any matter appears to be in dispute;" and unless a judge were of the highest order of merit, the greatest errors would prevail in the administration of justice. The proposal, that "in every case the judge should decide on the principles of law or equity arising out of facts, without reference to the form of suit," however specious and captivating, would often be found to work great injustice. He must be quite certain that he has all the facts before him, otherwise he would administer equity blindly and often erroneously; facts not before him would probably show that his decision was partial and unjust. The party would come to meet one demand, and the decision would go against him because he had not prepared himself for a case not made known to him; but if to avoid these evils, the cause be adjourned for the purpose of trying in fact a new cause, little is gained, perhaps nothing, and the natural consequence of the adoption of the principle recommended, which has been often recommended, and as often upon consideration rejected, would be uncertainty in the law, and a multiplication of suits. Having practised at the bar here, and having had a large share of chamber practice, I know how often causes are kept out of court by the opinions of counsel, and it is often lost sight of in considering the advantage of an efficient bar in the administration of justice, that a great deal of litigation is checked by the opinions of counsel which would otherwise flow in upon a court. The consequence of mixing systems of law and equity, of allowing a suit to be decided on notions of natural justice or equity, and not upon the adopted system of municipal law, of delegating large and discretionary powers to judges, and of suffering a suit to be brought in one form, and with one aspect and object, and a decree to pass in it upon some other state of facts, or on the same facts, but to a different end, would be to introduce great uncertainty, and to increase litigation, and it would be particularly objectionable in a place like Calcutta, a commercial community, with ramified interests closely connected with the maritime and commercial interests of England, and between which it has hitherto been the policy and object of the Government to keep to as close a similarity of laws as the different state of circumstances admits of. The system proposed by Sir Erskine Perry would work a sudden and violent change. It does not admit of gradual introduction. Surely the preferable course, especially in a country like India, is to proceed by steps, retaining as far as it can be done established systems, purging them of their defects, and establishing on existing foundations a reasonable and cheap and effective system, which may be worked by men, such as they are, and which does not depend for its successful working on the union of qualities and powers which are rarely found united.

Sir Erskine Perry proposes, that in the first stage of a suit the party bringing it should appear before the judge. This could not be done in a multitude of cases where the parties bringing the suit were not within the local jurisdiction of the court, and in many where it could be done it would be most inconvenient. If it should be said they may appear by deputy, by agent or attorney, it should be remembered that the agent or attorney is often but imperfectly acquainted, at the institution of the suit, with the facts of it. He is often wholly unacquainted with the grounds of defence even in an after stage of the suit, and the principals, some inadvertently, and some by design, conceal material facts from the knowledge of the attorney or agent. It may be requisite to file a plaint against a party at a time when it may be impossible to obtain a full knowledge of the case even of the plaintiff, still less of that of the parties sued. To require the appearance, therefore, of the plaintiff or his agent before the judge at this early stage of the cause for the purpose of settling the suit, would be in general ineffectual. If the appearance be merely to enable the judge, acting as officer of the court, to act the part of professional adviser, and to record the proceedings in a technical or legal form, for some such form there must be, though of a simple character, it must be remembered that the judge will then become mixed up with the party at an early stage of the suit; may mistake the statements of the party, or form an erroneous opinion of their legal bearing, he may content himself with such statement as the party gives, and take no steps to elicit a further statement; if he do more than this, he must sift and put searching questions, and either excite the jealousy and dislike of the suitor in that early stage, or inspire an equally unfortunate feeling, the feeling that the judge is his friend, and has formed a favourable opinion of his case, and thus raise the suspicion and jealousy of the opponent. The case will either be prejudged in the mind of the judge, or will be thought to be so. The system is to be applied not to simple demands of small amount; but to every case of complexity and difficulty which may be brought before a court. What judge can possibly be expected in such a case to form at once a tolerably correct judgment of the parties to be brought before the court, and of the mode most favourable to the suitor in prosecuting his case; this is the business of the professional adviser, and requires care and frequent conferences with the client, and is the subject of anxious consideration. Every failure will be imputed to the judge, and every suitor who brings a demand and fails, will turn upon his judge and say, "You misunderstood me; you did not frame my case as it should have been framed; my case was never properly brought before the tribunal, and it ought to be heard anew."

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anew." A timid judge will yield to the demand; and if he have courage to refuse, it will be said he has denied justice to cover his own blunders.

Where an officer is interposed between the judge and the party, these mischiefs to a great degree are averted. There is no system so good as that which enables a party who imagines he has a well founded claim, to prefer it without the previous sanction of a court, selecting his own professional adviser, in whom he has confidence, and to whom he may make disclosures he would be slow to make to an officer of the court or a judge, which enables him to select an advocate of integrity and skill; and no judgments are so likely to be correct as those which are formed upon reflection after the case has been fully argued.

In the administration of justice, freedom from every restraint not imposed by the law, is as necessary to the suitor and to his advisers as to the judge.

It is on this principle that privileges are allowed to the advocate which would otherwise be inadmissible.

It applies to the suitor not only in the choice of his advisers, but in the mode of prosecuting his suit.

Any interference of the court in these matters would destroy all confidence in it.

If the power of assigning an advocate to the party by the judge, not only without but against his request, would create suspicion, what would be the effect of assigning his attorney? of his becoming the attorney himself? of his calling for disclosures that the suitor was unwilling to make, and rejecting those upon which he relied?

Could it have any other effect than to throw upon the judge all the accumulated responsibilities of the professional character in all its grades, with all the invidiousness which is attached to each?

Ignorant parties in all countries, and in none more commonly than in this, are prone to attribute the failure of their suits to the treachery of their professional advisers.

Their council is in the opposite interest. Their attorney has received a bribe.

The complaints of the corruption and partiality of the arbitrators, from their being brought into more immediate contact with the parties, though judges of their own choosing, is proverbial.

Similar charges and suspicions would be heaped upon the judge, who would have nothing to oppose to them.

He would thus be deprived of all respect and authority beyond what the process of his court could command.

Such a system could only be tolerated in an infant community, and not in one like this, allied in all its interests with one in the highest state of civilization.

It is only by the conflict of independent views before an independent tribunal, that truth or justice can be elicited.

It is only by an intermediate agency between the court and the suitor that these benefits can be secured, and this agency cannot be complete unless it combines the exertions of those most competent to the investigation of facts, and those best qualified to enforce their legal consequences.

This has been the system adopted in most civilized countries, and is the only one which has been devised by the ingenuity of men, by which, in spite of natural inequalities, the powerful and the weak, the intelligent and the ignorant, the bold and the timid, are enabled to meet on equal terms, on the arena of justice.

That it is not equally successful in removing the inequalites of fortune, is an infirmity common to all human institutions, and no exemption from which can be presumed in favour of that which is opposed to it.

It is true, that every intermediate agency between the suitor and the court, is not only attended with expense, but with the introduction of a separate interest, not always in conformity with that of the suitor. But this is, to a certain extent, unavoidable, and is the necessary price by which alone any approach to freedom and equality can be secured to opposite litigants, and as such, wherever that object can be obtained, will be willingly paid. It does not appear that Sir Erskine Perry contemplates that the judge should, in fact, become the sole professional adviser of the suitor; but it appears that Sir Henry Roper anticipates that such would be the result at Bombay of the adoption of Sir Erskine Perry's plan, in consequence of the effect which Sir Henry Roper supposes that it would have there on the interests of the bar and attorneys. In my opinion, the adoption of Sir Erskine Perry's plan would not produce that consequence at this Presidency. I will, however, consider the probable working of the system under either supposition. I will take my examples from cases that have actually come before courts for decision. I will first select the case of Few *v.* Guppy, a case of no particular complexity. In that case, a vendor filed his bill in the Court of Chancery in England for a specific performance of a contract of sale of real estate. The vendee had been let into possession, and being in partnership with others, they had dealt with the property in the affairs of their partnership in a manner which it was said was injurious to the estate, and permanently diminished its saleable value; this was relied on by the plaintiff, not as the ground for compensation in case it should appear that no title to the premises could be made by the vendor, but as evidence of a waiver of good title, and the acceptance of the title such as it was. Now I will assume, that the plaintiff in such a case had no means of resort to professional aid, and that the judge alone could furnish him with the aid necessary to the institution of his suit in its most advantageous form. The plaintiff would have but an imperfect notion of his rights, but would resort, in the first instance, to the court. The judge, supposing him to

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be quick at ascertaining facts, and able to evolve them from the confused statement which would probably be made to him, with his faculties alive to guess at facts either studiously concealed or omitted from inadvertence, and above all, having leisure to conduct this investigation, would at length become acquainted with all or the most material of the facts of the plaintiff's case. Upon that, he would have to consider, first, whether a good title had been waived, if not, whether a good title could be made, a question often of very considerable difficulty; upon that he must either decide rapidly, and, perhaps, erroneously, or he must take time to consider it, but decide it he must, in his own mind, in that early stage of the cause, and ex parte, before the suit can be instituted. Let us suppose that he thinks a title can be made, and the suit proceeds on that supposition being prepared under his directions in the proper form. At the hearing the defendant being like the plaintiff, *inops consilii*, would not have the means of showing that the judge had mistaken the law, that he had overlooked this authority or misunderstood that, but still he might, if he were an intelligent person, bring certain facts to the judge's knowledge or to his attention, which had been either unknown or not sufficiently attended to before. The judge, whom we will suppose to be honest enough to correct his error, which I believe to be no violent supposition, would dismiss the suit prepared under his own advice, and in the mode in which he had prepared it. Would this be likely to inspire confidence in a court, or to give satisfaction to the public and the suitor? But suppose him to decide in favour of the plaintiff's claim, would not the defendant declare that his case was prejudged before it was heard; and that the plaintiff having first gained the ear of the judge, had irrecoverably biassed his mind against the defendant. Let us suppose, on the other hand, that the judge had thought that no case of title could be made. Would the plantiff be contented? He would himself be unable to bring the question properly before the judge for want of legal knowledge; would he be confident of the infallibility of the judge? He might have bought, under legal advice whilst he had resort to it, that, as a good title, which the judge thought a bad one. Whatever his dissatisfaction he must acquiesce; there would be no appeal, and his suit would then be instituted as for a compensation, and in that suit other parties would have to be included, and its termination would be protracted by questions in which he would be unconcerned. But, above all, it would not be the species of redress at which he aimed, and to which he thought himself entitled. In like manner, as in the preceding instance, new facts or new views of them might, even under this aspect of the suit, bar his recovery or limit it. The decision would be subject to the same reflections as in the preceding instance. Again, in such an aspect of the suit, not only would the plaintiff's claim for compensation have to be considered with the deductions, but the claims of the parties liable to the plaintiff, to be adjusted inter se with all the various questions arising out of partnership transactions, and to a certain extent these must be determined on in an early stage of the suit. I will next consider the same case on the supposition, that the plaintiff had the means of access to professional aid in like manner as he has at present. His attorney would collect the facts from him, would elicit those not originally communicated, and would then lay his case before counsel, who would, after looking into the authorities, and anxiously considering the case on his own responsibility, advise a particular course of procedure. The resort would then be to the judge. Now, in such a case, what would be his functions? Is he to be the mere scribe or entering clerk, to put in a legal form what the counsel directs to be done? Is that likely to degrade the judge or not? But the barrister would insist on seeing that the suit was rightly instituted, and that his directions had been complied with, and his demand would be reasonable and just. The judge then would be subordinate to the barrister. But if the judge is to exercise a judgment he must then examine into the case, and review the opinion of counsel. Let us suppose that he differs from the barrister. Does it follow that the barrister is wrong? The putting on of judicial robes works no miracle; if the man were ignorant, or but little learned, or rash and precipitate in judgment, though learned, or of an over-subtle and refining habit of thought, these defects would not be lessened by the mere assumption of the character of judge. Many barristers have justly a higher professional character than some judges. The suitor would probably be told by his attorney that his suit was likely to be prejudiced by the fault of the judge. He would withdraw his suit, and he would practically be denied access to the tribunal of justice. But supposing the suit to proceed, though instituted in a mode not approved of by the suitor and his professional advisers, if success attends it, the party who succeeds is not satisfied. It is not the remedy he sought, and to which he considers himself entitled. On the other hand, the unsuccessful party considers his case prejudged. But what if the defendant convinces the judge that the plaintiff is not entitled to relief, or though entitled to some relief, is not entitled to the specific relief claimed? What then would be thought? In what a position would the judge be placed who had insisted on the suit being framed upon his view, and had resisted the remonstrances of the sutor and his professional advisers. What benefit is there to counterbalance all these serious evils? In the case now under consideration, the saving of a trifling part of the cost of a suit at the risk of increased litigation, and larger expense in its subsequent stages.

I will now select a case lately under the consideration of this court. On a settlement upon a marriage treaty, the mother of the intended husband, having a considerable real and personal estate, conveys, by one deed, to which the intended husband and wife are parties, the real estate to trustees in trust for herself until the marriage in fee; upon the marriage to herself for life, remainder to the husband for life, or until he should be adjudged insolvent, and after the death of the husband or that adjudication, to the wife for life, using words of limitation of a singular and ambiguous character; with other limitations over. The personalty was conveyed by another deed to the same trustees upon nearly similar trusts, but with

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with a variation of language. Both these deeds were very unskilfully framed, and the meaning of the limitations to the wife was by no means clear. The marriage took effect. The husband was adjudged insolvent in the mother's life-time. A divorce *a mensâ et thoro* took place between husband and wife. The mother died. She left property to her son, who paid to the assignee under his insolvency the amount of all the debts, and claimed back the estate which the assignee had claimed. The wife insisted that the estates were her's under the shifting clauses. Her claim was resisted by the husband. She filed her bill. The questions that arose were, did the settler mean an insolvency after her own death, or an insolvency at any time? What effect had the cesser of the insolvency? Did the wife take any estate in possession immediately on the cesser, or was there a resulting use and trust to the settler, and if so, in whom was the present interest? If she took a present interest, was that subject to the *jus mariti*, and so the property of the assignees? and if so, had she a claim for a settlement, and to what amount? Now let us suppose the parties stripped of professional aid. Let us suppose the woman to become acquainted with her rights; she would necessarily be ignorant of the extent and actual state of them. The assignees and husband would scarcely be wiser. They all, or some one or more of them, resort to the judge. In such a case how hazardous would be the position of the parties. A judge unaided, would not, probably, on the mere view of the facts, unless he were singularly gifted with knowledge, diligence and patient investigation, discover on the first resort the points on which the decision of the cause should turn. It is too much to say that he might never discern them. It is the consequence of an argument at the bar sometimes to direct the attention of the court to points which may have escaped the attention even of counsel. A case clear on the first view of it, and in which the difficulties are concealed from view, would, in such a tribunal as that which Sir Erskine Perry recommends, be almost invariably decided on first impressions. A judge with no criticizing public, and few, save professional men, are competent critics of the decisions of a judge, would be in the greatest danger of falling into a careless and hasty decision of causes; and I should fear that few could be found whom it would be safe to entrust, especially in a country like India, under a system such as that which I am considering, with the discretionary and irresponsible powers with which it would entrust them.

Present Establishment of the Supreme Court.

	Company's Rupees.
Master, Accountant-general and Examiner in Equity of the Supreme Court, and Accountant-general of the Insolvent Court, Mr. Grant, per annum	48,000
Prothonotary, Clerk of the Papers, Clerk of the Crown and Sealer, Mr. Holroyd	36,000
Taxing Officer, Chief Clerk of the Insolvent Court and Record Keeper, Mr. Ryan	19,200
Sworn Clerk and Receiver, Mr. O'Dowda	27,600
Examiner in the Insolvent Court, Common Assignee and Commissioner for taking affidavits in Gaol, Mr. O'Hanlon	9,000
Attorney for Paupers	4,800
Three Judges' Clerks, at 700 rs. each	25,200
1st Interpreter, Mr. Blaquiere	9,800
2d Interpreter, Mr. Smith	11,100
And 50 rs. monthly for Office Rent	600
Interpreter of Foreign European Languages and Tipstaff, Mr. Siret	2,160
Cryer, Mr. Hilder	3,600
Allowance for Chopdars	1,176
Two Interpreters to the Judges, at 3,600 each	7,200
Clerk to the Grand Jury, Mr. R. Swinhoe	800
Moulovee	2,400
Pundits	4,800
Moollahs	528
Brahmins	528
Company's Rs.	2,14,492

Observations on the system of Procedure in the Supreme Court of Judicature.

The expenses of a contested suit on the plea side of the Supreme Court of Judicature at this Presidency, properly conducted without needless outlay, and without errors in the progress of it, do not materially, if they at all exceed the average cost of the trial of a cause in the Superior Courts at Westminster, even where the witnesses are all resident in the vicinity of those courts. Occasionally, the costs of a suit here will be found to be very high, but when that occurs, it has been either owing to some blunder committed in the management of the cause in its early stages, or to the expense of executing process at a distance,

distance, or to the necessity of having commissions to examine witnesses, or to the expense of translations, or to the union of one or more of these causes of expense. These latter special causes of expense occur here to a greater extent and with more frequency than in England. Where they do not occur, and there is no extravagance incurred (which when it occurs is commonly by the direction of the parties) either in retaining an unnecessary number of counsel, or in having unnecessary conferences with them, or in paying them unnecessary heavy fees, the cost of a contested suit on the plea side will, on an average, be found, I believe, to be much about the same as that of an ordinary cause in the Superior Courts at Westminster. It occasionally happens, especially where natives are parties, and the amount in dispute is large, that there is extravagance in the conduct of the suit in the instances before enumerated, at the suggestion of the parties, on whom, of course, this unnecessary outlay falls, whatever be the result of the cause. The fees to counsel and the expense of employing an attorney, constitute the principal portion of the expense of a suit. I do not concur with Sir Erskine Perry in his objections to the system of special pleading. I do not think that that system is peculiarly appropriate to the mixed tribunal of judge and jury, and I think that the substance of the system of special pleading is well calculated for a court constituted like the Supreme Court of Judicature. It throws off the admitted facts, brings prominently forward the disputed facts, prevents any uncertainty in either side of the facts on which either side relies, and tends to produce speediness and certainty of decision and cheapness of trial. It is very much the mode in which any sensible man in any domestic forum would apply himself to the settlement of any dispute referred to him by the litigants, and has its origin in simple times, when a simple and natural mode of procedure was not unlikely to prevail. The technicalities are of after growth, and not many of them are necessary to be retained. The nicety of construction of the language of written pleadings is the cause of frequent embarrassment and expense, and may be remedied; and it seems to be practicable to retain all the substantial part of the system of special pleading with all its acknowledged advantages, and at the same time to discard the material inconveniences to which it has become subject. The most obvious defect, the expense of litigation on points foreign to the merits of the case, has its origin frequently in the nicety, not to say subtlety, of the construction of language. Without meaning the slightest reflection on the bar of this Presidency, to whose talents, learning and honourable conduct I am glad to bear an honest and a willing testimony, I must observe, that less attention is paid here than in England to precision of statement in pleadings; from this cause occasionally arises expense to the suitor, and a special demurrer is occasionally filed which has no tendency to advance the real interests of the client. The court, however, has, I hope, effectually remedied this evil by a late expression of its intention for the future with regard to the costs of special demurrers of this character. The expenses of an equity suit here, as in England, are very heavy; I know not that they are heavier here, but undoubtedly the expense is in many instances oppressive; they may be reduced in some degree, and I trust that we shall succeed in effecting soon some reduction of them; but it seems to me that the defect is mainly in the system, and that an equity suit aims at too much, and that it is scarcely possible to reduce within moderate limits of expense, or a moderate compass of time, the conduct and duration of a regular suit in equity under the present system, which suit aims at settling all the rights between all parties interested to any extent in the subject-matter concerning which the present litigation arises. In a court constituted like the Supreme Court, where the same judges preside on all the sides of the court, much may be done in the simplification and improvement of a system of equity which it has not hitherto been found practicable to effect in England. Here the same judges who decide all questions of common law, are also the judges in equity, and there can exist no desire to retain jurisdiction on one side of the court in preference to the other; whereas in England there is naturally a struggle for the retention of jurisdiction wherever it has once attached. It would be difficult to show that any peculiar mode of procedure is essential to the decision of any questions that may arise under any of the various heads of jurisdiction possessed by the Supreme Court, and it would be obviously a great improvement to introduce in them a uniform mode of procedure which might easily be made to adapt itself to the particular system of laws to which it was applied.

To illustrate this by an example. A man sues for a divorce from his wife on the ground of her adultery: and he sues the adulterer for damages. As far as the proof of the adultery is concerned, the evidence will probably be the same, and is often supported by the very same witnesses. On the plea side of the court, the witnesses are produced; give their evidence vivâ voce; the judges observe their manner, and are alive to any thing that may detract from the credit of their testimony. On the ecclesiastical side, before the very same judges, the whole course is changed; they do not see the witnesses; their evidence is pleaded; if objections are made, these objections are by act in court; and a less satisfactory and more expensive mode of procedure is substituted, merely because the court is sitting as a Court Christian, and not a common law court. A suit for adultery no doubt is a suit of a wider range than one for satisfaction in damages against the adulterer; but it seems to me that one and the same suit seeking the double remedy, a divorce against the wife, and damages against the adulterer, could in most instances be decided without inconvenience by a court like the one under consideration. Let us select another instance; a suit on the Admiralty side on a maritime contract, exempli gratiâ a suit for wages by mariners. The joinder of many plaintiffs having not technically a joint cause of action, but a common claim in respect of the same subject-matter against the same party or parties, would be in my opinion an improvement in the system of common law; the remedies *in rem*, as the detention

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tion of the ship, and its release on security, are easy of introduction into a suit at law; why, then, should any difference exist between the trial of this claim and a claim for wages by an ordinary servant? These instances are merely specimens, and are amongst the first that occur to me, and I use them merely as illustrations of my proposition, that a uniform course of procedure is perfectly consistent with the administration of different systems of law. In considering the question of reform in the system of equity, it is requisite to bear in mind that a considerable part of its jurisdiction arises from defects of the common law, as from imperfect powers in courts of law, or from narrow and technical rules of law frequently working injustice, and as the jurisdiction has sprung up from defect in the law, an amelioration of the law supplies a remedy, and justifies the extinction of the jurisdiction. In some few instances equitable remedies are engrafted by statutes in the common law; in some few instances the courts of law have made the rigour of the system of law bend to the system of equitable principles, and where this has been fully done, the jurisdiction of equity in such instances has rarely been resorted to subsequently. In some few instances, powers once exercised by courts of law have gone out of use. In all cases which fall under any of these heads, the remedy is plain, correct the law; enlarge the powers of the court on its plea or law side, the jurisdiction of the equity side becomes then unnecessary, and may be abolished. For example. A chose in action is not assignable at law, except in special cases; make it assignable, and give the assignee his remedy at law. The like observation applies to all possibilities and contingent interests; and sales of expectancies and reversions should be permitted without the interference of the court of equity, save in cases of actual fraud. A court of equity on equitable grounds restrains the parties from proceeding to a trial, or from taking out execution, or stays waste to prevent irreparable damage, and so forth. In none of those instances is there really any necessity for a resort to the court on its equity side in the nature of the thing. That the judges are not conversant with equity cannot be predicated, for they are the equity judges on the equity side of the court. A court of law anciently restrained waste; and an account, now disused in courts of law, may be rendered as complete a remedy there as in equity, with proper machinery.

By an alteration, effected on these principles, the resort of suitors to the equity side of the court would become much less frequent than it is at present; but whatever scope is allowed to the operation of these principles, a large portion of matters will still remain subject to equitable jurisdiction, and therefore it is necessary to consider how far the practice may be simplified, so as to relieve it from its principal burthens.

The jurisdiction in equity may be divided into—

1st. Purely equitable.
2dly. Concurrent.
3dly. Legal, but administered in equity.

With respect to the first, where the principles of equity are ascertained, and have in effect become a species of law, there is no reason why they should be administered by a separate tribunal, and why they should not be transferred to a court of law. Then the anomaly of the same rights being enforced by one tribunal, and defeated by another, would be got rid of, and courts of equity would be relieved from a variety of matters, in which they in effect exercise a legal jurisdiction under another name.

2dly. Where the jurisdiction is concurrent, each would in some cases admit of improvement by a mutual transfer of their powers, so as to render each independent of the other. This has been done in a few instances, as for instance, by enabling a court of law to issue commissions to examine witnesses, and to entertain questions of interpleader. Another mode in which it might be done, would be by enabling courts of equity to try issues; and at law to give a discovery by directing the examination of the parties. If, however, evidence were to be received vivâ voce in all cases on all sides of the court, this larger improvement would render it unnecessary to introduce the partial amendment before referred to.

3dly. Where the jurisdiction is legal, but administered in equity, as is the case with account, administration of assets, &c. it is of little consequence whether it be retained or not, as the machinery must be retained, whatever be its denomination; this, however, might admit of some simplification. To pursue the above subjects more in detail under different heads of jurisdiction in equity.

Accident and Mistake.

Relief on these grounds might be given at law, as for instance, an action on a lost bill of exchange, giving indemnity. This principle has been applied by admitting an action on a lost bond or deed with an excuse for profert. The relief against forfeitures and penalties might also be extended, as in the case of arrears of rent.

Mistakes in instruments might be corrected at law as in equity.

Specific Performance.

This might, to a considerable extent, be effected at law. The principle is applied when a verdict for damages is given, reducible upon performance.

There seems to be no objection upon principle to the prosecution of an action at law upon an agreement for the purchase of real estate, claiming in the alternative a performance of the agreement or damages, and to a conditional assessment of damages with an option in the plaintiff to claim the specific performance. If a question arise as to title, it seems to me

that

that the court should itself determine the question of title without any reference to the Master, unless the investigation were one of a protracted character. The examination of parties at law would be the substitute for a discovery in aid of a suit at law, where a ground was laid for a discovery on summary application to the law court.

Trusts

Should remain subject to the jurisdiction in equity. A summary process would, in most instances, suffice, whether the object were simply an account, or the construction of an instrument.

Dower and Partition.

The jurisdiction in equity being grounded on imperfection of powers in courts of law, there seems to be no ground for its retention. If retained, however, the process should be summary, as it is in partition in the Supreme Court by one of its rules.

Account.

Unless the question involved the execution of a trust, there is no reason why resort should be had to equity, the machinery on any side of the court being capable of application on all its sides.

Infants and Lunatics.

The jurisdiction should be summary, and in the latter case without the expense of a commission, and the court itself summoning before it all necessary witnesses.

Summary Jurisdiction.

The institution of a regular suit is the great expense in equity as in the ecclesiastical courts. I think that a summary procedure might in most cases be instituted, as it has in some intances in the ecclesiastical and admiralty courts. It is already exercised in bankruptcy without inconvenience; it is given by several statutes, as in the case of infant trustees. By substituting summary proceeding for full proceeding and a regular suit, by the substitution of vivâ voce evidence for written testimony, by rendering a cross bill unnecessary by the examination of parties, now resorted to in some instances after decree, by adopting with extensions the practice lately introduced at law of calling for admissions, and by other modes of simplification, the burthensome character of a suit in equity might be destroyed, and the resort to that branch of jurisdiction, when necessary, would not be impeded, if not prevented altogether by a dread of the expense and protracted litigation to which an equity suit now gives rise. I will conclude these observations by observing that for a considerable part, and I doubt not the most valuable part of those relating to equity, I am indebted to Sir Henry Seton, between whose views as to the reform of the system of equity and my own, I am glad to observe no material difference.

13 February 1844. (signed) *Lawrence Peel.*

From *T. R. Davidson*, Esq. Officiating Secretary to the Government of India, to Secretaries to the Governments of Bengal (No. 29); Fort St. George (No. 44); and Bombay (No. 45); dated 22 June 1844.

Legis. Cons. 22 June 1844. No. 9.

Sir,

I AM directed by the Governor-general in Council to forward to you the accompanying printed copies of a Report by the Indian Law Commissioners, dated the 15th February last, with its enclosures, on the Civil Judicature in the Presidency towns, and to request that, with permission of the ———— you will distribute the same among the authorities of the ———— Presidency, and forward, for the consideration of the Supreme Government, the opinions they may form, in particular those of the Judges of the Supreme Court, with the sentiments of his ———— in Council on the several recommendations of the Law Commissioners.

Home Department. Legislative.

I have, &c.

(signed) *T. R. Davidson,*
Officiating Secretary to the Government of India.

Fort William,
22 June 1844.

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(No 15.)

From the Indian Law Commissioners to the Right Honourable the Governor-general of India in Council; dated 25 July 1844.

Right honourable Sir,

Legis. Cons. 3 August 1844. No. 1.

With reference to our Report dated the 15th February 1844, upon Judicature in the Presidency Towns, and to the papers printed in the Appendix thereto, we have the honour to submit to you a Supplement to the Appendix, containing a minute laid before the Governor in Council of Bombay, by Sir Erskine Perry, Puisne Justice of the Supreme Court at that Presidency. As this paper is supplementary to the minute of Sir Erskine Perry, contained in the Appendix, and refers to the other papers in the Appendix in which that minute is discussed, and ably vindicates the system of judicial procedure recommended in our Report, we have thought it proper to print it in its present form, to complete the subject.

We have, &c.

(signed) *C. H. Cameron.*
D. Eliott.

Indian Law Commission,
25 July 1844.

SUPPLEMENT TO APPENDIX.

From Sir *Erskine Perry*, Puisne Justice of the Supreme Court, Bombay, to the Honourable the Governor in Council, &c. &c. &c.; dated Malcompait, 22 May 1844.

Honourable Sir,

I have the honour to call your attention to a late Report of the Law Commission, dated 15 February 1844, and to the discussion contained in the Appendix thereto, with the view of raising the question as to the expediency of establishing in Bombay a civil court on the principles indicated by the Law Commissioners.

2. It has been long felt and acknowledged by those who have paid most attention to the interests of British India, that one of the most valuable boons which it lies within the competence of Government to confer upon this vast country, consists in the establishment of a rational intelligible system of law, founded upon the fixed principles which enter more or less distinctly into every scheme of jurisprudence, and adapted to the habits and customs of the different classes of the community. Such a system to be administered on simple rules of procedure, and with all the sanctions which experience has pointed out as appropriate for securing judicial purity and aptitude, may be safely affirmed to be the most potent instrument which a conquering nation possesses for securing the confidence and preserving the allegiance of its conquered subjects.

3. Nevertheless exceedingly little has been done hitherto towards this desirable end; and in the two systems of law dispensed by the British in India, namely, by the Supreme Courts at the Presidencies, and by the Company's courts in the mofussil, there appear to be defects of such magnitude and importance, as to render either of them incapable of rendering that service to the community which is predicable of a rational well-constructed code.

4. The chief defect in the mofussil system appears to be, the absence of any established law sources, from which a clear rule can be deduced on any occasion that may arise. Except in the simple cases that are provided for by the Regulations, I cannot well conceive what course a mofussil judge adopts towards ascertaining the rule to be applied in any doubtful question. The few treatises which are translated into English will carry a law student but a very little way, and the published reports would appear to show that on every intricate point a mass of conflicting opinions is sure to be elicited from the Shastries. The Regulations express that, in the cases not there provided for, the decision is to be according to equity and good conscience alone.

5. But what is equity when used in this vague sense? It is the notion of right, of just, of propriety, which the judge, upon hearing the facts, adopts. It is a notion that, in the absence of any standard to refer it to or authority to correct it by, must necessarily vary with every judge, just as much as the length of their respective feet, to avail myself of the illustration of Selden. An educated Englishman may study the principles of jurisprudence either in an English law library, or in the literature of the Roman and Rome-derived systems, and undoubtedly a well-grounded knowledge in one or other of the only two systems that have prevailed in civilized Europe, may render the dispensation of law according to equity and good conscience an easier task; but still, as neither of these systems is of authority in the mofussil, they neither of them contain the norma or standard to which a mutual reference can be made.

6. For these reasons, and from the received opinion that prevails (owing very much, I believe, to the high authority from whom it emanated, Sir Thomas Munro), that eminent judicial

judicial qualities are much less needed from civil servants than zeal and ability in revenue matters, the legal system of the mofussil would seem to contain no germs from which a rational scientific corpus of law can be eliminated.

7. English law, on the other hand, presents an immense arsenal from which the legal inquirer can furnish himself with weapons. The careful record of cases upon every doubtful point, which some hundreds of years have accumulated, affords a "precedent on the file," or a rule to be deduced by analogy, in every case that arises; and the judge in delivering such a rule is seen, not to be following the dictates or caprices of an arbitrary will, but to be administering the language of the law as ordained by a superior authority. The mode in which this system is applied however, the delay, vexation and expense which have to be encountered before the decision of the court is obtainable, the technicalities which so often interpose to prevent that decision proceeding on the merits of the case, and the impossibility of making the rationale of such results (if rationale there be) intelligible to a nation of foreigners, all these combined make the English system of law in its present form, even less capable than the mofussil system of rendering those services to the community which, as above indicated, a sound corpus juris is capable of affording.

8. But it should be observed, that, between the defects noted in the Supreme Court and mofussil systems, there is an essential or necessary distinction; for, whereas in the latter the defect indicated is inherent, and not capable of remedy, except by the institution of a body of positive law, in the former the evil is merely accidental, and is capable of extirpation without injury to the substantial fabric. In other words, the mofussil courts may be said to dispense a system of law deficient in substantive enactments, and as to which neither judge nor suitor knows where to seek for an authoritative exposition of the rule; but the law, such as it is, is dispensed for the most part in a simple and expeditious manner. The Supreme Courts, on the other hand, are the organs of a complete body of jurisprudence, and their decisions proceed on vouchable and vouched authorities, which are open to all to consult; but the mode of administering the law is as costly, complicated and dilatory, as the natural system of the mofussil is otherwise.

9. Now it is obvious, that if these evils of procedure were obviated, and simple rules of practice adopted in the Supreme Court, a complete system of jurisprudence would be at work approaching to the character of a science, containing full information and discussions as to every title of the law, the principles of which would be easily intelligible to the world at large, and which would be capable of easy extension beyond the limits of the Presidency, whenever the Legislature should think fit to add to the body of actual law prevailing in the mofussil.

10. Such seems to be the view entertained by the Law Commission, as evinced in their late and in preceding Reports. The simplification of English procedure, therefore, is the problem to which all those should address themselves who seek to benefit the Indian community in their legal relations and exigencies.

11. The Law Commission have addressed themselves to this subject, by treating of the fundamental distinction in English practice between the administration of law and equity, and as the rigid distinction between these two is a favourite "idol of the tribe" with English lawyers, the Commission have shown at considerable length, and, as I conceive, with complete success, that this peculiarity* in the administration of justice, fraught as it is with so much of the delay and expense alluded to above, is most easily to be abolished in the case of the Supreme Courts in India. Sir Lawrence Peel has carried out these views still further (App. p. 70) by indicating in detail how several of the distinct branches of equity could at once be placed within the jurisdiction of a court of law.

12. The Law Commission having thus got rid of one fruitful branch of vexation and expense in English procedure, go on to point out a uniform mode in which all facts in dispute between litigant parties should be brought before the court. "Rules of property," says Sir William Blackstone, "rules of evidence and rules of interpretation, in both courts, are or should be exactly the same; both ought to adopt the best, or both must cease to be courts of justice."—3 Comm. 434. But if this canon is applicable to courts of law and equity when sitting apart and composed of different individuals, how much more forcibly must it apply to a tribunal to which, by an effort of the mind, four or five different characters must be attributed at every sitting of the court, and in all of which characters different rules of law, different rules of evidence, and different modes of seeking out the truth are recognized as the governing doctrine. The mode proposed by the Law Commission to elicit the matter in controversy in every suit is to bring the litigant parties into the presence of the judge at the earliest possible period, and to take down from their lips, assisted by their legal advisers, the matters of fact on which the dispute in law arises, or the matters of fact on which the parties are at issue amongst themselves.

13. In a communication which I had the honour of making to the Law Commission in June 1843, I had previously urged the adoption of a similar system, induced thereto by observing, on the one hand, the extreme expense and delay of the prevailing procedure, by which, on the common law side, a disputed claim of above 350 rupees cannot be decided without

* The administration of law and equity by different courts is peculiar to England, for although a similar distinction existed at Rome under the terms "jus civile" and "jus honorarium," these branches of the law were not administered by different judges. The Prætor both gave (dabat) actions which were of the civil law, and decreed (dicebat) interdicts and other equitable remedies.

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without an expenditure of 1,200 rupees to the parties, and by which, on the equity side, a dishonest or vindictive opponent may protract the suit for 10 or 15 years; and, on the other hand, by observing the facility, the cheapness and satisfaction to suitors with which claims under 350 rupees were disposed of in the small cause court by a procedure similar in its main features to the system proposed.

14. The plan of procedure thus alluded to has been subjected to a minute and elaborate criticism by Sir Lawrence Peel, and has received from that distinguished person (expressing at the same time the sentiments of the other two judges at Calcutta) unqualified disapprobation. It is evident, therefore, that the arguments alleged by him deserve the most careful attention, not only on account of the high authority from which they emanate, but because they will be seen to be entertained by men to whom the reproach so often urged against our common profession of reluctance to aid the cause of law reform, which none but lawyers are ordinarily competent to meddle with, can in no respect be made.

15. But before I proceed to notice in detail Sir Lawrence Peel's objections, I will, for the purpose of simplifying the point under discussion, advert to a confusion with which the question is complicated respecting the meaning of the ambiguous term "equity," and I will then recapitulate very shortly the system of procedure proposed.

16. According to the cloudy notion which prevails in the world at large as to the meaning of equity in its technical application, a notion from which even lawyers are not always free, the term denotes something higher and better than law, transcending it in its range, and founded, not like law generally, on the commands of the supreme authority in the State, but on the *non obstante* power attributed to some particular functionary of deciding cases according to his views of *qæuum et bonum*. It is true that equity, on its first appearance in the only two countries (Rome and England) where it has been known of as something distinguished from law, assumed a form in great degree corresponding to the above notion, and the same historical ground can be discovered for its origin in either country. The *jus civile* of Rome, with its limited range of ideas, its cumbrous machinery for the transfer of property, and its superstitious adherence to symbolic forms, although all-sufficient for a young and half barbarous horde, was found wholly incommensurate with the wants and exigencies of a growing civilized people, and hence the power assumed by the Prætor of breaking through and remedying the harsh enactments of the civil law was forced upon him, and gladly submitted to, from the crying necessity of the case. The very same inaptitude of the common law of England, with its rugged feudal provisions, to meet the more complicated relations engendered by commerce and the progress of social life, is equally to be exemplified in our own history; and the stubbornness of our common law professors, in resisting the attempts to break through their narrow formulas, is pithily illustrated by the anecdote of Sir Thomas More, so aptly cited in the Report of the Law Commission, p. 44.

17. But those who conceive that the dispensing power which the *jus honorarium* and equity first assumed in Rome and England, continued to be the distinguishing attribute of each system, most grievously err. In the former country, it was soon found to be intolerable that the Prætor should lay down a special rule for each particular case, according to the whim or caprice of the moment, and accordingly a distinct body of equity or honorary law was soon established by the perpetual edict, into which new institutes were from time to time introduced as any other new law. So also in England, the common sense of mankind (well condensed in the above sarcasm of Selden) soon put a check on the arbitrary power assumed of overriding the law, and a body of equity law came to be established just as precise and positive in its principles as common law itself. The subjects it deals with are, for the most part, different, being those which the common law, from its narrow principles or the defective machinery of its courts, was unable to cope with. But in the cases brought before a court of equity, the equity judge proceeds as little upon arbitrary discretion as the common law judge in those cases peculiar to his court; each of them consults his books, and applies his powers of ratiocination to discover the rule applied in similar cases by his predecessors, and each holds himself equally stringently bound by such rules when discovered. It is true that equity law has entirely grown out of the decisions of equity judges; and therefore it follows, that new rules are from time to time laid down by them as the occasion arises; but the same remark is almost equally applicable to the common law. Such is the system of English jurisprudence. Lord Holt, by a single decision, introduced as it were and established the whole law of bailments. Lord Mansfield, by a series of decisions, may be said to have created the commercial law of England. Lords Nottingham and Hardwicke did no more for equity than the above great judges for common law. The most complete similitude exists, therefore, between the two systems, and, except for the uncouth phraseology, the department of civil law, which is now divided by law and equity, might be much better distinguished into common-law law and equity law.

18. It may be expedient in a highly populous and civilized community, to parcel out between different tribunals the various subjects on which litigation is likely to arise: thus, the exposition of wills and enforcement of the marriage contract or domestic relations may be committed to one court; trusts, accounts and questions on partnership to another; breaches of contract and enforcement of simple jura in personam to a third; and this is what occurs in England. On the other hand, all these different jurisdictions may be concentrated in one court, having appropriate machinery and requisite powers for discharging all its various functions effectually; and this is the case with the Supreme Courts in India. But what is contended for and maintained, is, that in either of these cases, the rule which is pronounced by the court, whether it be a court of law or a court of equity, or a Doctors' Commons' Court (in which not even the nominal distinction exists), or whether it be one

Supreme

Supreme Court, the rule, I repeat, to be laid down, is, the substantive law of the land irrespective of any nominal distinction into common-law law or equity law.

19. The above is conceived to be a true though a succinct explanation of the relative meanings of law and equity, but whether it be theoretically correct or not, it is undoubtedly the practical account of the mode in which questions, whether of law or equity, are disposed of by the judge, by which it will be seen that the same definite attributes and fixed character may be predicated of each, and are recognized as belonging to each respectively.

20. This being so, it is submitted, that in all cases, but more especially in those where the functions of law and equity are centred in one court, the mode of bringing the facts in controversy before the court should be the same. Whatever has been seen in experience to be an effectual instrument towards eliciting the truth, should be adopted in all cases where the truth is a matter of research. If, therefore, the vivâ voce examination of parties in open court has been found more effectual than examination upon interrogatories in a close room, and in the absence of the judge and of the parties, there is no doubt as to which of these two should be adopted as the general rule. If, again, the advantages which equity practice presents, by subjecting the parties in the suit to full disclosure and discovery of all they know, are so great as almost wholly to counterbalance the defective mode of eliciting the truth by interrogatories, experience and reasoning evidently suggest that these two potent modes of ascertaining the facts should be combined, and that the inferior and contradictory processes should be abandoned. If, lastly, it has been found by experience that the great portion of the delay, vexation and expense, which attend litigation in the technical procedures devised by practitioners under the English and Rome-bred systems,* are owing to the mass of written pleadings and various agencies which are interposed between the suitors and the court, it seems most desirable that a recurrence to first principles should be made, and that every facility should be afforded to suitors of communicating with the judge in open court, without the intervention of legal agency, except when the assistance of professional learning and acuteness is required.

21. The following three articles therefore form the basis of the system of procedure which I ventured to propose, and which the Law Commission also adopt as the rules of practice for their proposed new court.

1st. Vivâ voce examination of witnesses as the general rule.
2d. Examination of parties to the suit.
3d. Appearance of parties before the judge in the first instance, and oral pleadings under the authority of the Court.†

22. I now apply myself to Sir Lawrence Peel's objections. To the two first propositions I do not understand that any objection is made. It would seem, therefore, that all the judges of the Supreme Court at Calcutta concur in recommending these great improvements in procedure. Sir Henry Roper is also of opinion (App. p. 61.), that the first rule should be adopted, and I do not conceive that he objects to the second; he also thinks it feasible, that the pleadings should be framed under the supervisance of an officer of the court.

23. The objections of Sir Lawrence Peel, therefore, apply to the third point only; viz. to oral pleadings, and the appearance of the parties before the judge. Neither of these propositions is very distinctly combated in terms, but I take them to be tacitly involved in the

* It seems to be conceived by some, that by adopting what is termed "summary procedure," a great portion of the existing evils of equity practice may be got rid of; Sir Lawrence Peel appears to incline to this view.—App. p. 71. But it must not be forgotten, that summary procedure is also technical, and that all the same causes are at work to make it just as dilatory, expensive and counter to the interests of suitors, as so-called regular procedure. In the continental systems, from which summary procedure has been taken, a form of proceeding exists, called "summariissimum," intended to provide for cases of pressing emergency, but it seems that practitioners contrive to make this most summary proceeding occasionally last 20 years.—*See* Von Savigny's Necht des Besitzes, p.653, 6 ed.

I see by a late Athenæum, that the King of Prussia is proposing to introduce oral pleadings into the German courts, in order to correct the same evils which we are encountering in English procedure.

† The Law Commission, in reference to the views expressed in my minute on special pleading, have stated a stronger dissent of opinion than I conceive to exist between us. In that minute, I described the course of pleading in equity, and pointed out and objected to the necessary delay and expense which it occasioned. But in order to prevent it being supposed that these objections grew out of a bigotted preference for the system in which I had been myself educated, I went on to deprecate special pleading equally strongly, as the general form of procedure. But, unquestionably, I do not at all dissent from the use which the Law Commission propose to make of certain of the rules of special pleading, which have been found effective in practice, and undoubtedly, so far as the "rules of pleading are conformable to the logical operations of the mind in the logical management of a dispute," (*see* Sir H. Roper's Minute), they not only should not be, but cannot be departed from in any scientific system. I conceive, however, that if written pleadings are abolished, and, with them, the greater part of the technicalities with which written pleadings are accompanied, it is a misnomer to apply the designation of special pleading to a new system, in which only a few of its rules are adopted. The system of special pleading, properly so called, I continue to think wholly inapplicable to India; it is almost impossible, from the circumstances of the country, that a race of men like special pleaders, whose natural habitat seems the temple, should flourish in this country, and from the remarks of Sir L. Peel, I should gather that the Statute of Beaupleader is as much a dead letter at Calcutta as it is at Bombay.

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the following propositions, which I conceive to be the pith of the objections urged by Sir L. Peel.

1st. The plan proposed is not applicable to Calcutta, because it throws additional duties upon the judges, and their time is already fully occupied.—p. 64.

2d. The plan requires a judge of higher qualities than can be found, and even the highest qualifications would not be sufficient to ensure success, because such judge would have too much power.—p. 65.

3d. Equity would be administered blindly and erroneously, because the judge would not be certain that all the facts were before him.—Ibid.

4th. Decisions would go against one of the parties by surprise, or if adjournment were made to enable him to meet the facts of the case brought against him, nothing would be gained by the new plan.—Ibid.

5th. Uncertainty would be introduced into the law, and, consequently, increase of litigation.—Ibid.

6th. The latter result would also flow from the abolition of opinion business.

7th. Both the latter results conjointly from decisions proceeding "on notions of natural justice or equity, and not upon the adopted system of municipal law."—p. 65.

8th. Variance would be introduced between the law of England, and that prevailing at Calcutta.—Ibid.

9th. The system introduces a violent change, and does not enable the preferable course of introducing improvements by steps.—Ibid.

10th. Various objections to the appearance of parties before the judge in the first instance, founded on the difficulty of the operations to be performed by him, and the odium he will be exposed to.—p. 65, et seq.

24. Now, undoubtedly, a formidable list of specious objections is here presented, and if only one-half of them is well founded, it were undoubtedly wiser "*stare super antiquas vias*," and to reject the proposal at once. But upon examination, I think it will be found that the greater and substantial portion of these objections may be resolved into two propositions; First, the proposed plan will introduce misdecision, and consequently uncertainty into the law. Second, the plan gives the judge too much power. Of these in their order:

25. First, as to misdecision. This class of objections proceeds upon two assumptions; 1st, That the proposed procedure will not bring the facts in each case to the notice of the court; 2d, That upon the facts so brought, the judge will decide on arbitrary notions of justice and equity, and not on the substantive law of the land. Now, the first assumption is a fair hypothesis to be made; the question is as to a new system of procedure, and it is a complete answer to it if it can be shown that it will fail in eliciting the facts necessary for a decision, all that can be required in such an hypothesis is to bring forward sufficient arguments to support it. But the second assumption is altogether untenable and gratuitous. No change is proposed to be made in the substantive law of the land, but only in the mode in which the controversies of suitors are to be brought forward, in order to have that law applied to them. There is nothing, therefore, whatever in the premises to warrant the conclusion, that judges will decide more erroneously in one mode than in the other; indeed, it is clear to demonstration that the decision will proceed in every case according to the particular judge's knowledge of the English law, and his powers of applying it to the facts laid before him. It is difficult, therefore, to account for the appearance of this argument in the discussion, except by supposing a momentary confusion of the rules of procedure with the substantive law of the land, and by referring to the equivocal meaning of the term equity, both of which points have been discussed above.

26. The first assumption, therefore, is all that needs to be noticed, viz. that natural procedure will not bring out the facts. But what arguments have been brought forward by Sir L. Peel to warrant this assumption? Not one; and it is evident that, in a speculative inquiry, the authority of no man (and I have much pleasure in seizing the opportunity to state how highly I esteem the authority of Sir Lawrence Peel), can establish a proposition, except so far as it is supported by solid argument. To me it appears that the great advantages of the scheme consist in its aptitude to admit of all facts in issue between the parties being readily brought before the court, and that it is directly calculated to obviate those evils in the existing system, by which essential facts are so often shut out, and by which so many decisions pass irrespective of the merits of the case. Every practitioner's memory will furnish him with innumerable cases at the assizes, where the parties, through a mistake of their pleader, or negligence of their attorney, have been what is called "turned round on the pleadings," or put out of court by a failure to prove a notice or signature, and the volumes of reported cases are equally full of decisions where the interest of the suitors have been concluded for ever on some blunder or other of their legal advisers, and wholly irrespective of merits.

27. But specific instances are brought forward to show how ill the personal appearance of the parties before the court, and oral pleadings, would work in practice; and as such instances, ordinarily, take more hold of the mind than abstract reasoning, it is well to examine them somewhat minutely. The cases referred to are Few *v.* Guppy, and an anonymous case decided at Calcutta. The first was a question of specific performance of a contract respecting real estate; in the latter a construction had to be put on an ill-worded marriage settlement.

28. Now it may be observed generally of cases of this description, that they form but a small minority of the total number of the legal controversies which arise in the community. In the majority of cases, say five out of six (*see* App. p. 51), in which recourse is had to courts

courts of law, the resistance of the defendant is founded, either on want of means, or in the desire to stave off the claim for a time by reliance on "the law's delay." With respect to such cases, I apprehend that it can hardly be disputed that too great facility cannot be afforded to plaintiffs to enforce their legal claims, and that no evil can be incurred; but, on the contrary, great advantages to public morality, by withdrawing from dishonest or tricksy defendants, all opportunity of defeating their opponents by chicanery. This class of cases, therefore, presents no difficulty as to their being disposed of in the first instance, by the appearance of the parties before the judge, without any preliminary expense; so far, therefore, a great advantage is gained for the majority of cases, and of honest suitors. There remains the remaining portion of cases above noted; namely, that portion in which some disputed question of law or fact requires to be decided by the court.

29. Now it is evident that this class of cases is divisible into those where the parties are wealthy enough to avail themselves of the assistance of counsel, and into those where they are not. In the latter of these cases, according to the system proposed, the onus would, undoubtedly, be thrown upon the judge of lending its assistance to the quasi-pauper parties (for if actual paupers, they would have the assistance of Government), and of eliciting from them the actual question. This might be a disagreeable office for the judge, but I cannot see in it any thing but a benefit to the public. It is true, that in such cases the court, in the absence of any forensic advocacy on either side, would often fail in discovering points material to the issue, points which the parties themselves might be blind to, and the law delivered would be frequently inferior in quality to what it would have been, after hearing all that legal acuteness and industry could suggest. But the same observation is equally true of every system that exists, or that can be conceived. Proof of all the facts relating to a given case, and bringing to bear all the law applicable to such facts through the organs of the greatest intellects which the legal profession can afford, are two operations necessarily demanding great time and expense. And to expect that two paupers, contending for a hovel on the common, will have their case equally solemnly and well decided with a case like that of Lord Scarborough *v.* Lumley, where many thousands a year was depending, were to expect an impossibility. An approximation to this result is attained by every approach made towards simplifying and generalizing the substantive body of the law itself; but in the meantime, and indeed at all times, the most important desideratum for poor suitors is, that their legal disputes should be determined by the judges of the land as speedily as possible, and with as little destruction as may be of their only capital, time, even at the risk of the occasional misdecision which summary procedure necessarily, but not exclusively, involves.

30. With respect to the class of cases where a doubtful question arises, and where the parties are in a condition to avail themselves of legal assistance, very little need be said. The eminent advantage of such assistance is so obvious, that no one would fail to avail himself of it when within his reach, if his rights or possessions became the subject of legal discussion. Sir Lawrence Peel is not at issue with me on this point. He does not conceive that the adoption of a simple system of procedure would supersede the employment of counsel, at all events at Calcutta, but it is evident that what is true of Calcutta in this respect is true of all the world, for the principles at work are those of human nature. Although, therefore, Sir Lawrence Peel argues the question in one view, as if counsel would not be employed in difficult cases, as that view is neither his nor mine, I need not consider it further in this place.*

31. To apply the above observations to the cases, Few *v.* Guppy, and the anonymous one at Calcutta. If they belonged to the pauper class, which apparently they did not, they would have to be placed by the judge in a train for decision, and to be decided according to the best lights of his legal information and natural capacity. That they would be occasionally ill-decided, is to say no more than that man is fallible; but that they would receive a less share of attention, or of anxiety on the part of the judge to be right, than similar cases now meet with in England or in India, there seems no reason whatever for supposing. If, on the contrary, the cases were such as enabled the employment of counsel, the conduct of the suit, or litis-contestation would be accompanied with all the assistance, which professional advocacy is now capable of affording to suitors, with the additional advantage of securing to the latter an indemnity against any damage, which, under the present system, he is so frequently exposed to by mistakes fallen into during the interlocutory proceedings in the suit.

32. The assumption, therefore, that the natural mode of procedure will not enable the facts of each case to be brought before the court, appears to me to be warranted neither by the arguments brought forward, nor by the two cases cited, and consequently all the objections which involve this assumption as an enthymeme, fall to the ground.

33. The second main objection is, that the plan will place too much power in the hands of

* I entertain, indeed, a strong conviction that the existence of a simple system of procedure would open a much wider field for forensic talent and employment than at present. The elicitation of truth amidst conflicting statements, the clear exposition of principles from circumstances "immersed in matter," and the logical reasoning required to bring these principles within the rules of the law, are operations that will be so immeasurably better conducted by men trained in legal science and controversy at the bar, than by the common herd of mankind, that it seems to me clear their services can never be dispensed with. And if so, all that money now spent in useless procedure, will form a larger fund for their employment.

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of the judge. Now no one is more alive than myself to the evils of attributing undefined irresponsible powers to the judicial authorities, and although I conceive that Mr. Bentham has gone ludicrously far in the surveillance he proposes to exercise over judges (whom, truth to say, he often treats little better than pickpockets), I confess that I should be sorry to see any of the existing checks over their discretionary power diminished. But it appears to me that India is the last country where any apprehension on this score needs to be entertained. The judges of the Supreme Courts have very little of the moral support which judges in England derive from the influential classes of society. They do not form a part of, and have no connection whatever with, the local government of the country, and they are occasionally placed in something like direct conflict with it. They exercise a decided and direct control over the governing classes of the community, who have been said by a very high authority * occasionally "to confuse power and right in a manner in which nobody confuses them at home," and such control, however lightly or temperately administered, can scarcely prove otherwise than galling. The public press represents the interests of the executive classes almost exclusively, and therefore has additioual motives to the tendency of a public press generally, to keep a rigid look out for judicial peccadilloes. The bar, lastly, either from local circumstances, or the absence of that easy gradation to the bench which occurs with the bar in England, have little of that esprit de corps which distinguishes the profession at home; and, from their connexions with clients, with the governing classes, and with the press, they are more prone to concur in any carpings and cavils at judicial authority, than to support it even in its due exercise by their moral influence. These circumstances may not be prejudicial in their result to the public interest, however annoying occasionally to the judge personally (and Sir James Mackintosh alludes to them feelingly more than once), but most undoubtedly they afford potent sanctions against any undue exercise of power.

34. The specific case pointed out by Sir L. Peel (App. p. 65), as giving greater power than that which a judge ought to possess, consists in the power attributed to him of deciding "whether a suit shall be instituted in the first instance or not." But, with deference, it appears to me that this power is no greater than what the judge possesses, and most frequently exercises at present. If a plaintiff applies for a writ, and fails to persuade the judge, either by himself or his counsel, that he has got a cause of action, I can see no greater exertion of power in a refusal of the writ, than is displayed under the present system when the judge nonsuits the plaintiff, equally, after hearing his own view of the case as urged by his advocate. An arbitrary abuse of this power has been checked hitherto by the publicity of proceedings; by the license of speech in counsel, by the power of the party to bring forward his case again and again, and by appeal; to say nothing of the other motives influencing every judge more or less strongly, love of reputation, love of justice, fondness for the art, &c. These checks have proved amply sufficient hitherto to prevent wanton misdecision; they would exist with equal force in the system proposed, and the only innovation is, that the power would be exercised without the parties being required to expend 1,200 rupees to bring their case into court.

35. The other objections, not included in the above two propositions, are of a minor character. If the plan is not applicable to Calcutta, because the time of the judges is already fully occupied, it would be a misplaced economy on the part of Government to withhold from the community a sufficient number of courts, by which law might be administered at one-tenth of the present expense on the common law side, *see* App. p. 53, and at a still greater ratio of diminution, both of time and expense on the equity side.

36. But there need be no additional expense to Government, for it appears to me, I confess, that the system which prevails in India for the Judges of the Supreme Courts to sit conjointly at the trials of matters of fact, is warranted neither by principle nor by the home practice, which in all other matters has been so servilely followed. All trials of fact in England (with the exception of the nearly obsolete trial at bar), are tried before a single judge, whether at equity, or at Nisi Prius, or in criminal sessions. Another exception indeed exists in the case of trials before country gentlemen at quarter sessions, but this is so confessedly the worst tribunal in England, that it can hardly afford an example for the Supreme Courts in India. If then a recurrence to English practice were made by the latter courts, there would probably be quite sufficient time for the Calcutta judges to get through all the cases that would arise on the new system, singly in the first instance, and conjointly as a court of appeal, from the decision of any one of the three judges. This last advantage is wanting to the Presidencies of Madras and Bombay, but it is a deficiency in a judicial system so greatly to be deplored, that I cannot help supposing that, at some time or other, the Government will supply it. And what leads me more strongly to this conclusion, is the fact, that the appointment of a third judge would add little or nothing to the expenditure now made, as it would supersede the necessity of employing non-professional judges at the petty sessions and court of requests, and so commit the whole judicial business of the Presidency to its legally educated and responsible judges.

37. The objection as to the inability to introduce the scheme proposed gradually and without violent change, has been so completely anticipated by the cautious provisions of the Law Commission, that it is unnecessary to notice it further.

38. I have thus satisfactorily to my own mind, and after a most careful perusal of Sir Lawrence Peel's minute, disposed of the various objections which he brings against oral pleadings,

* Sir Benjamin Malkin. Letter to Governor of Singapore, on the Government Records.

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pleadings, and the appearance of the parties in the first instance before the judge. But I cannot be blind to the inclination we all have to regard one's own arguments with complacency, and to undervalue those of one's opponent. I think it very probable, therefore, that on a question of this kind, the reasoning which I conceive to be altogether untenable, may appear to others of overwhelming force, or at all events equally specious with that which I have urged, I therefore address myself to the practical proposition which I mentioned in my first paragraph.

39. It will be seen that the question at issue is, as to the results which may be predicted from the employment of a new system. It is in great degree, therefore, a question of prophecy. But there is this distinction between me and my opponents, and this great advantage on my side, that I am able at every stage of the inquiry to point at the successful operation of a system in practice, conducted upon the principles I contend for. In the small cause court at Bombay, the pleadings are conducted under the superintendence of an officer of the court; and the parties are examinable at each stage of the inquiry. The result of the first rule is, that during the three years and upwards that I have had a seat upon the bench, I never witnessed the decision of a cause upon any other ground than the merits. The result of the second rule is, that in every case where conflicting testimony occurs, the immense advantage obtained by the power of sifting the parties themselves, enables the judge to form a much clearer and more satisfactory conclusion than in any other mode in which disputed facts are brought before the court. The result of the two rules combined is, decision of suits at one-tenth of the ordinary expenditure, and a satisfaction to suitors with the mode in which their cases are disposed of, that I do not apprehend arises upon litigation on other sides of the court. It appears to me, therefore, that Bombay offers peculiar advantages for making an experiment of the species of court proposed by the Law Commission. There seems to be a desire on the part of the community that the powers of the court should be extended, and the memorial lately presented to Government with a prayer to this effect, was supported by the recommendation both of Sir Henry Roper and myself, when Government did us the honour of consulting us. The Bombay judges have time upon their hands which might be devoted to the new court, and if the court of requests were left as it is for the present, the experiment might be made without a single rupee of additional expenditure. Nor would any violent change be at all introduced. The small cause court would remain the exclusive court for suits under 350 rupees only; for all other causes, it would be at the option of plaintiffs to take them there or not, and we may be quite sure that the acuteness of mankind to discover their own interests, would soon ascertain whether the fears prognosticated by Sir L. Peel were imaginary or not. If the scheme did not work well, it would be abandoned at once; if the public, on the other hand, found it to accord with their interests, the disputed problem is solved.

40. I have not had an opportunity of communicating with the Chief Justice on this suggestion, as I am writing this paper at the Hills, but as I am proposing a scheme which undoubtedly throws more court business upon the judges than heretofore, I think it only fair to him to state, that I am perfectly willing to undertake the sole sittings of the small cause court, so as to allow of all the causes decided by me (on which any difficulty may arise), to go up on appeal to the Chief Justice, as a sort of Chancellor. This is the only method in which I can suggest to myself the formation of an efficient court of appeal, where there are only two judges, and although the arrangement would place the puisne judge in a more subordinate post than he at present fills, I am quite ready to submit to this infinitesimal loss of dignity, and to the extra work contemplated, for the sake of the public benefit, which I anticipate from the experiment.

41. I have only, finally, to apologize for the wide range and controversial tone which this paper has necessarily assumed, and to observe, that my justification consists solely in the opinion I entertain, that the questions here discussed, have a much wider range than the narrow limits of Bombay.

I have, &c.

(signed) *E. Perry.*

(No. 38.)

From *T. R. Davidson*, Esq, Officiating Secretary to the Government of India, to Secretaries to the Governments of Bengal (No. 38); Fort St. George. (No. 56); and Bombay (No. 57); dated 3 August 1844.

Legis. Cons. 3 Aug. 1844. No. 4.

Sir,

In continuation of my letter, No. 29,* dated he 22d June last, I am directed by the Governor-general in Council, to forward to you the accompanying printed copy of a Supplement to Appendix of the Report of the Indian Law Commissioners therewith forwarded, dated the 15th February 1844.

Home Department, Legis'ative.

* Madras, No. 44. Bombay, No. 45.

I have, &c.

(signed) *T. R. Davidson,*
Officiating Secretary to the Government of India.

Fort William,
3 August 1844.

(No. 1435.)

Unrecorded. From the Under Secretary to the Government of Bengal, to *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, Home Department; dated 12 September 1844.

Sir,

Judicial. In compliance with the requisition conveyed by your letter (No. 38), dated the 3d ultimo, I am directed by the Honourable the Deputy-governor of Bengal to transmit, for the information of the Supreme Government, the accompanying copies of letters noted on the margin,* relative to the Report of the Indian Law Commissioners on Civil Judicature in the Presidency Towns.

2d. The opinion of the Sudder Board of Revenue will be submitted when received.

I have, &c.

(signed) *A. Turnbull*,
Under Secretary to the Government of Bengal.

Fort William,
12 September 1844.

From *C. W. Brietzeke*, and *Russomey Dutt*, Esqrs., Commissioners of the Court of Requests, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, Judicial Department; dated 31 July 1844.

Sir,

We have the honour to acknowledge the receipt of a letter (No. 1094), from Mr. Under Secretary Turnbull, dated the 8th instant, forwarding copy of a Report from the Indian Law Commissioners, dated 15 February 1844, with a revised draft Act for establishing a court of subordinate civil jurisdiction in the city of Calcutta, and copies of a minute by Sir Erskine Perry, a letter from Sir Henry Roper, and a letter from the judges of the Supreme Court, with a minute of Sir Lawrence Peel annexed, and requesting our opinion thereon.

2. We have perused these important documents with feelings of great interest, and shall not hesitate to report our sentiments candidly on the subjects which they embrace.

3. The advantages of the administration of justice by one system of courts, with one uniform, cheap and easy procedure, and the practice of vivâ voce examination of the parties in the suit, are undeniable, but any new scheme which may be necessary to be substituted in lieu of the one in force for years, and with the workings of which the people are habituated, requires, we think, serious consideration and caution.

4. In whatever advantageous light the establishment of a subordinate court of civil jurisdiction, with one uniform system of procedure in common for all description of causes, such as generally come at present before the Supreme Court in its common law side, and the court of requests, respectively (for the sake of brevity, we shall denominate the first, "intricate cause," and the second, "simple cause") according to the revised draft Act now submitted by the Indian Law Commissioners, may appear in theory, we feel assured that its practical utility, in all respects, will be very doubtful. In a tribunal which will be required to hear and adjudicate daily upwards of 200 "simple causes," and also causes of small amount generally, an intricate, cumbrous and dilatory procedure, and we must confess that the procedure prescribed in the draft Act, though less dilatory and expensive, and more efficacious than the existing procedure of the Supreme Court, still appears to us intricate, cumbrous and dilatory, as respects those descriptions of causes, is more likely to defeat the ends of justice than to facilitate its administration. What, in our opinion is highly desirable in such a court is, that its procedure be simple and easy; its judges be able (at least in small cause suits) to communicate with and understand freely, and without any intervention, plaintiff, defendant and witness; and that it may be reached easily by all classes of suitors. And in case it should be found necessary to establish two separate courts

* From Commissioners Court of Requests, dated 31 July 1844; from Registrar to Sudder Court, No. 1267, dated 23d ultimo, with Enclosure.

courts for the adjudication of causes, of small and large amount, the jurisdiction of each court, we think, should be clearly defined.

5. Having premised thus much, we shall proceed to offer such observations on the different sections of the draft Act for the new court, as may appear to us necessary to elucidate our views.

6. We regret that we differ somewhat in opinion with the Indian Law Commissioners in two of the most fundamental points upon which this Act is based, and also in some minor points, as far as they are applicable to the "simple causes" and causes of small amount generally; and we regret this the more because our opinions, we believe, do not coincide with those of the most enlightened jurists.

7. The points of difference we allude to are—First, The institution of all suits on an ex-parte examination of the plaintiff before one of the judges, who is to be at liberty to grant summons, or reject the application at his discretion; and, secondly, the application of one uniform system of written procedure in common to all description of intricate and "simple causes" for large and small amount.

8. We are by no means admirers of the system of previous examination of the plaintiff, nor of allowing process to be issued without some deposit of institution fee by him.

9. On the first head, we think, in "simple causes" suits, as well as small amount cause suits generally, such a procedure will not only be dilatory, but highly unsatisfactory, and in some instances injurious to suitors.

10. It would not be out of place to mention here a remarkable fact, which often occurs in the court of requests. A defendant in a suit against whom a verdict may have been pronounced, sometimes honestly, and sometimes designedly, supposes himself aggrieved. He presents a petition to the commissioners praying a summary reconsideration of the case, and is told that his prayer cannot be complied with summarily; but he may, in conformity to the rules of the court, institute a cross suit for a rehearing, after depositing the amount of debt and costs decreed against him. He does so; and if upon the second investigation the former decree is confirmed, and his cross suit dismissed, he invariably says to the commissioners, "you have directed me to institute this suit, and how can you now dismiss it, and cause a heavy loss to me by costs?" Now, when such is the impression in cases like this, what will be the impression and feeling of the suitor on a verdict being pronounced against him, in a suit, the institution of which in a manner has been previously sanctioned by the court. And in the same manner a suitor will be very much dissatisfied on being summarily and abruptly dismissed, merely because the commissioner who holds the pre-examination upon a summary ex parte inquiry, should be of opinion that there was no cause of action. It is not an unfrequent occurrence in the court of requests, that the plaintiff in the opening of his case, either by reason of ignorance or timidity, is unable to state it so clearly as to satisfy the commissioner that there was a good cause of action; but the defendant, on being interrogated, either at once confesses judgment, or admits that there was once a cause of action, but it is now voided by subsequent or other matter.

11. Nay, more, it happens daily that some cases must necessarily be heard ex parte. The plaintiff appears and proves the service of the summons and the attachment, either at the defendant's house or personally. He then proceeds to call his witnesses, and to produce his books; these are all carefully examined and cross-examined. Doubts arise in the mind of the sitting commissioner as to the justice of the claim; perhaps a material witness is absent from Calcutta, whose presence would clear up the matter. The plaintiff is therefore directed to issue out a second attachment against the defendant, with a view to bring him before the court to plead, returnable in one month, and to produce the witness he requires. On the defendant appearing, and being confronted with the witness, he instantly confesses judgment, and prays for time to pay the debt by instalments. Neither can we omit stating here, that on hearing both parties and examining their witnesses, it sometimes turns out that the plaintiff's claim has been liquidated in full, and that really he had none at the period of instituting his suit.

12. These facts indicate, we think, one thing, the extreme difficulty of conducting correctly a pre-examination of the plaintiff's claim, and the impossibility of obtaining all particulars, so as to enable the most acute judge to say whether a good cause of action exists. Indeed, in whatever light we view this subject, it appears to us fraught with serious objections.

 13. On

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13. On the second head, we think the system of allowing suits to be instituted without deposit of some costs, would encourage fraudulent litigation, and be oppressive to honest men, without an equivalent chance of reimbursement of the expenses of judicial establishment by a levy of a fee against the losing party. Our letter, dated 10th September 1840, conveys fully our views upon this subject, which subsequent experience has rather strengthened; and as they so fully coincide with those recorded by the honourable H. T. Prinsep, in a minute dated 17th September 1842, we have taken the liberty to copy it in the margin.*

14. We are therefore of opinion that, at least in all small cause suits, plaintiffs should be allowed to obtain process without any previous inquiry, or any other restraint than the deposit of an institution fee, and that it should be a fixed rate of per centage upon the sum sued for.

15. The minor points of difference alluded to by us are,

1st. The strict application of one uniform procedure to all description of causes; and,

2dly. Presence of a jury.

16. Section 10 treats on the manner of commencing suits, and sections 11, 12 and 13, on pleadings. The plaint is to be reduced in writing, and we presume the pleadings also. Such procedure, we fear, will be dilatory, perplexing and vexatious to, and in many instances out of the reach of the small amount cause suitors generally, and the business of the court will fall into arrear, unless a large number of commissioners were appointed to keep pace with it. We apprehend, however, that the latter arrangement will not only be expensive, but inconvenient. We are therefore of opinion, that no written plaint or pleading in detail should be required from the small amount cause suitors generally, but that they should be all oral, and the result only, and not the details, should be noted down by the presiding commissioner, or an officer of the court under his immediate direction.

17. Under sections 8 and 9, provision is made for a jury, but "their verdict shall only be for the information of the conscience of the court." We do not anticipate any beneficial result from this imperfect provision. Generally speaking, a jury in a civil case, we think, makes the machinery of justice unnecessarily cumbersome and unwieldy.

18. In reference to the appointment of the commissioners of the new court, alluded to in the 2d, 3d and 4th sections, we observe the following note appended at the bottom of page 4 to the Law Commissioners' Report:

"The only qualification we have introduced into the Act for the professional commissioners is, that they shall be barristers of five years' standing. Under this provision, the judges of the Supreme Court might, of course, be employed in administering justice in the new court; but if they should not be so employed, the suitors will have the ready means of obtaining the benefit of their learning, under the scheme which we are recommending by appeal to the College of Justice."

19. And we are of opinion that it will not only enhance the dignity of the new court in the eye of the suitors, but the court will possess their confidence much more, especially in respect to the decisions of legal points, if the judges of the Supreme Court were made ex-officio commissioners, as proposed in the draft Act read in Council on the 23d November 1843. An addition to section 2 appears

* "The judge is left at his discretion, in decreeing a cause, to adjudge against the losing party a fee, to be realized in part relief of the cost of the judicial establishment. I have heretofore pointed out, that this method of reimbursing Government will never answer, for whose business will it be to pursue the debtor and exact the amount so adjudged. The order will, so far as the treasury benefits, be mere waste paper; and, at any rate, will be realized so irregularly as to make the law tax unfair as it will be unpopular.

"The principle, as it seems to me, on which Government is entitled to demand fees, is that courts and judicial officers are only resorted to for the compulsory enforcement of debts, when the creditor cannot realize by his own means; for the aid he asks he expects, and is of course willing to pay, looking to recovery from the unwilling debtor, if his means shall suffice. The Government is, in this respect, like an arbitrator or referee, who always is paid before he lets the award out of his hands, leaving the after recovery to be adjusted as part of the subject of arbitration. If any fee at all is taken to reimburse the charges of judicial establishments, it should be taken as the condition of affording the aid of court by the issue of the first process. The Government never was, nor can be, a successful enforcer of decrees. The result would probably be to fill the gaols with Government debtors, entailing further charges on Government, and yielding nothing."

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appears to us necessary; namely, "that separate sittings may be holden before different commissioners at one and the same time, at any convenient place within the town of Calcutta."

20. No comments appear necessary on sections 1, 5, 6, 7, 15, 16, 22, 23, 24, 25, 26, 27, 28 and 29.

21. The section 14 appears to us ambiguous. Sections 17, 18, 19 and 20 relate to fees. We have already expressed our opinion on this point in the 8th, 13th and 14th paragraphs; and we beg now only to add, that it appears to us advisable that a discretionary power should be given to the commissioners to grant process free of costs, and to remit costs, wholly or in part, to unfortunate honest suitors. Further, we think that it would be very difficult to carry into effect the provision of section 21.

22. No provision appears to have been made in the draft Act for the commissioners taking the usual oath of office, nor for executing decrees of the zillah court of Twenty-four Pergunnahs, under Act XXVII. of 1839, and taking depositions of witnesses under Act VII. of 1841, nor for the apportioning of diet money to debtors confined in execution, as at present is established by law.

23. We are of opinion that it would be beneficial if the provisions of Act XIV. of 1840 could be extended to the Hindoo and Mussulman suitors; but we apprehend that as long as 21 George 3, c. 70, s. 17, remains unrepealed, this object cannot be accomplished.

24. In conclusion, we beg respectfully to state our humble conviction that, without the modifications suggested by us, the utility of the Act now recommended by the Indian Law Commissioners in respect to the adjudication of all causes of small amount generally, appears to us very doubtful, and that the draft Act, read in Council on the 23d November 1843,* for the establishment of a "small cause court," by the provisions of which, in cases of legal difficulties and doubts, the opinions of the judges of the Supreme Court as ex-officio commissioners are made available, appears to us better suited for the adjudication and disposal of causes of small amount generally, than the one now recommended, notwithstanding that the former establishes a separate court for this class of causes.

* *Vide* the Draft Act (the last of these Papers), p. 116.

We have, &c.

(signed) *C. W. Brietzeke,*
Russomoy Dutt,
Commissioners.

Court of Requests,
31 July 1844.

(True copy.)
(signed) *A. Turnbull,*
Under Sec. to the Gov^t^ of Bengal.

(No. 1267.)

From the Register of the Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 23 August 1844.

Sir,

I AM directed to acknowledge the receipt of your letter (No. 1092) of the 8th ultimo, with its accompaniments.

Sudder Dewanny Adawlut.
Present: R. H. Rattray, C. Tucker, J. F. M. Reid and A. Dick, Esqrs. Judges.

2. In reply, the majority of the court desire me to observe, that these papers refer exclusively to the common law and equity jurisdiction of the Supreme Court, on which they feel themselves unable to offer any opinion.

3. A minute, recorded by Mr. Dick on the subject, is herewith forwarded.

I have, &c.

(signed) *J. Hawkins,*
Register.

Fort William,
23 August 1844.

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Minute on the Report of the Indian Law Commissioners upon Judicature in the Presidency Towns.

Being called upon by the Government to give my opinion on the above Report, I have read it with the utmost attention and a lively interest.

The larger portion of the Report is dedicated as a preliminary step to a most interesting, elaborate and successful defence of the comprehensive views entertained by the great Lord Mansfield, and the learned Justice Buller, on the propriety of courts of law granting relief in every instance in which a court of equity would eventually give it. Sir William Blackstone seems to have entertained a like opinion, when he declared, "It were much to be wished, for the sake of certainty, peace and justice, that each court would, as far as possible, follow the other in the best and most effectual rules of attaining those desirable ends. And sure there cannot be a greater solecism than that in two sovereign independent courts established in the same country, exercising concurrent jurisdiction, and over the same subject-matter, there should exist in a single instance two different rules of property, clashing with or contradicting each other:" and a little further on he speaks of "two separate jurisdictions now existing in England, but which never were separated in any other country in the universe."—Com. III., 441. Such sentiments, it will naturally be expected, must meet with a ready concurrence from a Company's judge, who has been in the habit during thirty years of granting in one and the same courts whatever relief law, equity and good conscience could administer. The fact is, the separation of the two systems of law and equity in English judicature was purely fortuitous, and originated from nothing in the nature of the things, as is evidenced by its non-existence in any other country in the universe; therefore its introduction into a new system of judicature may at once be negatived without hesitation: were, however, the question the rooting up of the separate system from English judicature, the growth of ages, the culture of the brightest intellects, and the profoundest learning, the boldest reformer might pause trembling! Where both systems exist, as in the Supreme Courts of the Indian Presidencies, both may be extensively reformed and improved, as shown clearly in Sir Lawrence Peel's minute, and yet preserved distinct. There is perhaps more than plausibility in the following opinion: "The power which the superior courts of equity possess in certain cases to correct and amend the law, nay even control its administration by other courts, is most beneficial, as in the instance of issuing injunctions, which peculiarity in the English system of jurisprudence, by keeping the provinces of law and equity distinct, preserves to the courts of common law those advantages of simplicity and precision which they could not enjoy if their established forms of proceeding were suffered to bend to and be modified by the equitable circumstances of each particular case, whilst at the same time the intolerable inconvenience which must arise from a too rigid adherence to rules too narrow to embrace complicated questions is obviated, by the institution of a court empowered "to supply what is defective, and to control what is unintentionally harsh in the operation of general principles."

2. The aim and end of the Report is the establishment of a subordinate court for Calcutta, to be governed by equity and good conscience, following the law, that is, by English law and English equity. In this respect it would, in a great degree, accomplish the wishes of two great luminaries of the law, Lord Chief Justice De Gray, "who never liked equity so much as when it was like law," and Lord Mansfield, "who never liked law so much as when it was like equity." It would go far to unite the truth and justice of equity with the cheapness and expedition of law. Appeals are to lie from this court to the College of Justice. If the court is to follow English law and English equity, I would, with due deference, suggest the propriety, nay, necessity of restricting the appointment of all the commissioners to members of the English legal profession; and the Judges of the College of justice to Queen's judges. They alone will be virtually the judges, for no non-professional commissioner, nor any of the Company's sudder judges will presume or venture to differ from their learned colleagues. Sir William Blackstone thus speaks of English equity: "The system of our courts of equity is a laboured connected system, governed by established rules, and bound down by precedents from which they do not depart, although the reason of some of them may perhaps be liable to objection."—Com. III. 433. Again, "The system of jurisprudence in our courts, both of law and equity, are now equally

equally artificial systems, founded on the same principles of justice and positive law."—Com. III. 434. And again, "A set of great and eminent lawyers who have successfully held the Great Seal, have by degrees erected the system of relief administered by a court of equity into a regular science, which cannot be attained without study and experience any more than the science of law."—Com. III. 1844. Would it be wise, would it be just to expect any man, however well and liberally educated, and naturally endowed, to administer on two such complex sciences, justice and equity without study professionally and without experience.

3. It is proposed that the pleadings be oral, and reduced to prescribed form by the judge. The evils of this have been well pointed out by Sir H. Roper, and forcibly demonstrated by Sir Lawrence Peel. It appears in Sir Erskine Perry's minute, that the experiment has been tried at Western Australia and at Singapore, with what success is not stated. If civil causes could be tried like criminal ones, plaintiffs, defendants, witnesses and proofs all present, and decided off hand, no doubt much expense would be saved, and incalculable vexation prevented. This course might do for very simple cases, and of very limited value; in complex cases it would certainly fail; and in important cases off-hand justice would too frequently be cruel injustice; cheap articles are too often painfully dear. Sir H. Roper says, the oral system would annihilate the bar; and Sir Lawrence Peel, that it would deteriorate the bench. How deplorable would be the consequence of either evil. Both have shown how the superfluous expenses and delays of pleadings might be curtailed, and the benefits fully preserved. In estimating English jurisprudence we must not look to pounds, shillings and pence only. Its moral effect on the constitution, on the nation, and on every country and people to which its influence extends, should ever be in view. To what mainly do Englishmen owe their freedom and their independence? To their laws, and their righteous administration. To what do judges owe their profound learning, their acute intellects, their patient bearing and research, their incomparable probity and impartiality? To the learning, the astuteness, the untiring assiduity, the wachfulness, the honesty and the independence of the English bar—the true bulwark of England's freedom. The English bar should, therefore, I would strenuously urge, be fostered and encouraged in its genuine inherent qualities in every British colony. There is another consideration, I humbly conceive, which should not be lost sight of in legislating for a colony: every tie that closely connects it with the mother county is valuable, and nothing is so strong as a country's laws and its judicature. These should, therefore, be preserved as similar as possible.

4. With reference to the expression in the Report, that the Presidency courts should be made fit models for the mofussil courts, which should be taught not only by precept, but by example,—I will take leave merely to observe, that the Cornwallis system of judicature is well calculated for the Company's courts, and the circumstances of the country, and our singular rule: it was founded, I believe, partly on the English and Scotch systems, and partakes of a great deal of what is good in them, free from much that is bad in the way of unnecessary technicalities, verbosity, expenses and delays: it has suffered much since its first institution by heedless reforms, though improved in some respects: if administered by judges properly educated and trained up by successive advancements; and the bar of pleaders well cared for, and the pleadings reduced to more simplicity and precision, I believe it would prove excellently adapted for the wants of the Indian community, and tend to promote liberty and honesty of feeling. The Regulation code, especially of 1793, is so clearly interwoven with proprietary rights in land, that it must at all events be preserved in its integrity.

Sudder Dewanny Adawlut, Calcutta, (signed) *A. Dick.*
19 August 1843.

(A true copy.)
(signed) *W. Kirkpatrick,* Deputy Register.

(A true copy.)
(signed) *A. Turnbull,*
Under Secretary to the Government of Bengal.

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(No. 1599.)

From the Under Secretary to the Government of Bengal to *T. R. Davidson*, Esquire, Officiating Secretary to the Government of India, Home Department; dated 16 October 1844.

Unrecorded.

Judicial.

Sir,

With reference to your letter, No. 38, of the 3d instant, I am directed by the Right honourable the Governor of Bengal to forward, for submission to the Supreme Government, the accompanying copy of a reply, dated the 4th idem, from the Commissioners of the Court of Requests, regarding the letter from Sir Erskine Perry to the Government of Bombay, printed in the Supplement to the Appendix of the Report of the Indian Law Commissioners.

I have, &c.

(signed) *A. Turnbull*,
Under Secretary to the Government of Bengal.

Fort William,
16 October 1844.

From the Commissioners of the Court of Requsts to *F. J. Halliday*, Esquire, Secretary to the Government of Bengal, Judicial Department; dated 4 October 1844.

Sir,

We have the honour to acknowledge the receipt of a letter (No. 1474) from Mr. Under-secretary A. Turnbull, dated the 16th ultimo, forwarding, for our observations, two printed copies of a letter from Sir Erskine Perry to the Government of Bombay, dated 22d May 1844, as a Supplement to the Appendix of the Report of the Indian Law Commissioners, sent to us with the despatch (No. 1094) of the 8th July last, and beg to say in reply, that, having attentively perused the paper now transmitted, we do not see any reason to alter our views, as expressed in our letter of 31st July last, and consequently we have no additional observations to offer on the subject under consideration.

We have, &c.

(signed) *C. W. Brietzeke*,
Russomoy Dutt.
Commissioners.

Court of Requests,
4 October 1844.

(True copy.)
(signed) *A. Turnbull*,
Under Secretary to the Government of Bengal.

Unrecorded.

From Sir *H. Roper*, Knight, Chief Justice of the Supreme Court of Bombay, to the Right honourable the Governor General in Council, &c. &c. &c.; dated 10 January 1845.

Honourable Sir,

The Government of Bombay informed me in October last, that the Government of India requested to have the opinions of the judges of the Supreme Court at Bombay, respecting the Report of the Law Commissioners, dated the 15th of February 1844.

Shortly after I had begun to write upon the subject, interruptions arose from private matters, and immediately afterwards a term and a session occurred, so that I was unable to conclude writing the observations I have now the honour to transmit, until the middle of December, since which period much time has been lost through the dilatoriness of the person employed to copy what I had written.

I have, &c.

(signed) *H. Roper*.

Bombay,
10 January 1845.

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As the judges have been requested to give opinions on the Report of the Law Commissioners, dated the 15th of February 1844, it is scarcely open to me to say, that my opinion is expressed in my letter of the 4th of August of the previous year, which, as forming part of the Supplement to the Report, has already been submitted to the Government of India. That letter commented on Sir Erskine Perry's suggestions for changing the mode of administering justice, and therefore has reference to the Report, in which similar plans and opinions are proposed and advocated. When the letter was being written, I had no reason to suppose there was any such unanimity between Sir Erskine Perry and the members of the Law Commission; and it appeared to me that the Commissioners had not invited any discussion of the subject; I therefore limited myself to a few general observations, and when afterwards aware that Sir Erskine Perry's minute had been favourably entertained, I was glad to find the judges at Calcutta had canvassed it more fully, and it might be sufficient for me to say, that, with some slight qualification, I concur in their opinions, as expressed in the minute of Sir Lawrence Peel, dated the 13th of February 1844.

Sir Erskine Perry's minute, and his subsequent letter of the 22d May, are auxiliary to the Report, together with which they have been printed, and they are obviously relied on as supporting or confirming the latter. I shall therefore controvert certain positions in the minute and letter to which I cannot assent, and some of which have, I think, a tendency to prevent a dispassionate consideration of the subject; but I shall first point out a minor inaccuracy which cannot affect the general principles contended for. In the 48th paragraph of the minute it is proposed, that by an Act of the Government, the interest on unclaimed estates in the hands of the ecclesiastical registrar be applied to the maintenance of the projected court. An Act of the Government could have no such effect, for in default of legatees, next of kin and creditors, those funds are the property of the Crown. If it were notified, not merely in the London Gazette, which few people read, but also in the principal newspapers of London, Dublin and Edinburgh, that such estates are still unclaimed, the Crown and other parties entitled might become apprized of their rights, and claimants to the eight lacs in question might speedily appear.

An impartial inquiry into the merits and demerits of the Supreme Courts can hardly be obtained in India, where each of those courts, from its establishment, has been viewed with jealousy by local rulers and members of the civil service of the East India Company, forming the most influential classes of the community. The difficulty is increased when, as in the present instance, the discussion is chiefly carried on between judges of those courts on the one hand, and upon the other the Law Commission, consisting, very differently from the original intention of the Legislature, of three members of the civil service, and one gentleman whose professional practice had terminated long before his arrival in this country. Further difficulties have arisen from the institution of comparisons between the Supreme Courts and those of the mofussil, to the disadvantage of, and with highly coloured views of the defects of the former; and from a representation that different forms of process for matters of civil, criminal, legal, equitable, ecclesiastical or admiralty cognizance, were adopted in the Supreme Courts, because Sir Elijah Impey, and the other judges first appointed to the bench at Calcutta, were under temptation "to form a costly establishment, with a number of offices, to which the different codes of practice were to afford fees, and of which the founders were to have the patronage." These comparisons and positions, if undisputed, might be held undisputable; and I shall first apply myself to the imputation upon Sir Elijah Impey and his colleagues.

I know not whether their respective circumstances exposed the judges who first sat upon the bench at Calcutta to the alleged temptation, or whether, in exercising their patronage, those judges afforded reason to believe that offices in the court had been created from unworthy motives. When we consider, however, what has occurred in the United States of America; if we do not see reason to doubt the expediency of administering law and equity by the same modes of procedure, we may at least hesitate to ascribe dishonest views to the first judges of Calcutta, because in their court, law and equity and other branches of jurisprudence were kept separate, being administered by different modes of procedure, as in England.

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Mr. Justice Story says: "In nearly all the states in which equity jurisprudence is recognized, it is administered in the modes and according to the forms which appertain to it in England; that is, as a branch of jurisprudence separate and distinct from the remedial justice of courts of common law. In Pennsylvania it was formerly administered through the forms, remedies and proceedings of the common law, and was thus mixed up with legal rights and titles, in a manner not easily comprehensible elsewhere. This anomaly has been in a considerable degree removed by some recent legislative enactments. In some of the states of the Union, distinct courts of equity are established; in others, the powers are exercised concurrently with the common law jurisdiction, by the same tribunal, being at once a court of law and a court of equity, somewhat analogous to the case of the Court of Exchequer in England. In others, again, no general equity powers exist; but a few specified heads of equity jurisprudence are confided to the ordinary courts of law, and constitute a limited statutable jurisdiction."

In the tribunal above described as analogous to the Court of Exchequer in England, equity is administered in the same manner as in the Supreme Courts in India. One object of the Report is to have equity administered, as formerly in Pennsylvania, through the same forms, remedies and proceedings as the common law, if not through "the forms, remedies and proceedings of the common law." Whether equitable and legal rights and titles might not thus become "mixed up in a manner not easily comprehensible elsewhere," may be worthy of consideration, especially as legislative enactments have been required to check such evils in Pennsylvania, inhabited by a shrewd people, fully awake to their own interests, and amongst whom equity jurisprudence had no existence till 1790, long after Pennsylvania had ceased to be subject to the British crown. Indeed, it is worthy of remark, that in several of the countries now included in the United States, there was no equity jurisprudence whilst they continued colonies of Great Britain; but at present there are few states in which it has not been adopted; and in nearly all the states in which it now exists, it is administered in the like modes and forms as in England, separate and distinct from the justice of courts of common law. And this state of things has been established since the revolution. In Pennsylvania, where equity jurisprudence was according to the system contended for by the Law Commissioners, legislative remedies for that system have been resorted to. What the evils and remedies were, I have at present no means of ascertaining; for I have but one or two books relating to American law. I find the equity jurisprudence of Pennsylvania in question in the case Sims Lessee *v.* Irvine, in the Supreme Court of the United States in the year 1799, and again in Hollingsworth *v.* Fry, in the Circuit Court, Pennsylvania district, in the year 1800. In the last case, Mr. Paterson, a judge of the Supreme Court, said: "There is a strange mixture of legal and equitable powers in the courts of law of this state. This arises from the want of a distinct forum to exercise chancery jurisdiction, and therefore the common law courts *equitise* as far as possible." But neither of those cases discloses the nature of the evils alluded to, and I now merely rely on what has occurred in the United States, as ground for doubting whether Sir Elijah Impey and his brother judges were actuated by sordid views, in keeping law, equity and other branches of jurisprudence separate at Calcutta, and administering them by different modes of procedure, as in England.

Under the charter of the Supreme Court at Calcutta, it was imperative on judges to administer justice in its several branches according to modes and forms analogous to those appropriated to them respectively in England. After prescribing the mode of procedure in actions at law, in general terms, the charter provided that the court should be a court of equity, and administer justice in a summary manner, "as nearly as might be, according to the rules and proceedings of the High Court of Chancery." Criminal justice was directed to be administered in such or the like manner and form, or as nearly as the condition and circumstances of the persons and the place would admit of, as courts of oyer and terminer and gaol delivery did or might in England; and with respect to the ecclesiastical and admiralty jurisdictions, a slight conformity to modes of procedure in use in the analogous jurisdictions of England was enjoined. A passage from Sir Elijah Impey's convincing speech at the bar of the House of Commons, on the 4th of February 1788, is prefixed to the copy of the charter inserted in the first volume of the Rules and Orders of the Supreme Court,

Court, &c., edited by Mr. Smoult and Mr. Ryan. It thence appears, that the draft of the charter in question had been perused by Lord Thurlow, altered by Lord Loughborough, revised by Lord Walsingham and Lord Bathurst, and commented upon by them all respectively, when in office. We may conclude that they approved of the provisions of the charter, and that the judges of Calcutta, in organizing the court, could not have disregarded the opinions of such men.

It would be misapprehension to suppose that such evils as are exemplified by the statement of the case of Poonjee Caunjee *v.* Abdool Ruheem Khan, in Sir Erskine Perry's minute, sec. 18, are of common occurrence under the present system of equity jurisprudence at Bombay. The bill was short, and might have been answered within less than 15 weeks; but there may have been overtures for peace in the interim, and it does not appear when the counsel and attornies respectively received their instructions. A person employed to copy the interrogating part of the bill, not seing the usual words, "whether, and how otherwise," in that part by which, in case assets should not be admitted, it was required that an account should be set forth, altogether omitted copying that passage, and hence the answer was defective, in not setting forth an account. Within 12 days after the exception had been taken, the further answer was put in. The cause might have been heard in the next term, and without any evidence being taken; for the defendant's answer admitted the complainant's claim, but denied assets. The complainant, however, successively filed two amended bills, each so copious as to require a new engrossment. The object was to extract full accounts, independently of proceedings in the Master's office. Notwithstanding the authority of White *v.* Williams and Leonard *v.* Leonard, and that class of cases, it appears to me that such a course should be wholly disallowed. There was nothing analogous to it in the old action of account, which the judges at Calcutta now propose to restore, thus impliedly consenting that, to some extent, the system I object to shall be discontinued.

Two years elapsed after filing the rejoinder before the case was brought to a hearing, when a decree for an account was taken by consent. The delay, I conceive, could not have occurred, had the plaintiff been determined to speed the cause; but he may have been influenced by the following motives, to which a gentleman who, as acting master in equity, became acquainted with the suit, assured me that much delay in the Master's office was attributable. The defence was, want of assets, and this gentleman informs me he understood that the complainant, apprehending the defence might be made good, if the account were taken immediately, deferred proceeding, in order that further assets might be got in, and that interest upon the amount already received might accumulate. There are circumstances consistent with this view of the matter; for when the answer was filed, a large portion of the assets (9,051 rupees) ultimately received, had not been recovered by the executor. The complainant did not bring the decree into the Master's office until more than three months after its date, and from that time up to January 1838, a period of nearly two years, only 11 effectual meetings were had before the Master, whereas the complainant might have taken out as many warrants as he pleased. From the 12th of April 1840 to the 10th of February 1841, that is to say, in a period of ten months, there was only one attendance at the Master's office. Some delay may have arisen from the gentleman who was Master in 1836 having become insane. Another gentleman was appointed to act for him till he resumed his office in, I think, 1837, but he soon became ill again, and was obliged to relinquish his appointment.

To me it appears, not only that the case is peculiar, but that the description of it in the minute is somewhat coloured, for we therein find a period of above twelve months, which it is said elapsed between a demand for payment and the filing of the bill, put forth as a portion of the law's delay. The minute also is inaccurate as to some of the particulars of the case. It is said, "the plaintiff having a claim against the testator of between 2,000 and 3,000 rupees, applied to the defendant for payment of his debt, and at all events for an account of the testator's assets, but the defendant refused both one and the other. The plaintiff was therefore forced to file his bill, &c." There was no evidence of any such application for an account of the testator's assets prior to filing the bill. It is not even alleged in the bill that any such application was made. The complainant's claim was founded on a bill of exchange, drawn in his favour upon the testator. It was stated

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stated in the bill in equity, that the testator accepted the bill of exchange as security for the drawer, and also that the testator paid to the complainant a small portion of what was due upon the acceptance, and that after the testator's death the defendant had accounted with the drawer, and had been credited in, or had received value for the full amount for which the testator had become liable by the acceptance. But there is not a word in the bill of any prior application for an account of the testator's assets. After alleging, as a pretence, on the part of the defendant, his declaration that he had no assets, the usual charge to the contrary is added in these words, "Whereas your orator charges the contrary thereof, and so it would appear if the defendant would set forth as he ought, but which he refuses to do, a full, true and particular account, &c." Even this charge was not admitted by the answer, in which the defendant fully admitted the plaintiff's claim, and offered to account for the assets.

It is said in the minute that the answer was excepted to, and on argument a further answer was ordered. The origin of the exception I have already mentioned. There was no argument of the exception. No order for a further answer was made, and within twelve days after the exception was put upon the file, the further answer was put in; circumstances tending to show, as the fact was, that the omission had occurred through the oversight of the defendant's counsel. After nearly three years litigation the complainant took, by consent, the same decree which he might have had upon bill and answer within the first five or six months.

It is said in the minute, "a long litigation of nearly four years took place on these points in the Master's office, when a report was presented altogether against the defendant. This report was excepted to by the defendant, but all his objections were overruled." It should have been added, that owing to an error of the Master, the defendant was charged with 17,263 rupees too much. Had that error not occurred, the testator's estate would have been found indebted to the defendant, whose defence, want of assets, would thus have been established. It was ordered, on further directions, to the effect that the error should be rectified, and, with a view to costs I presume, that the Master should inquire and report whether certain property received by the defendant, had been fairly brought to account. The defendant in an account annexed to his answer, and in another account filed in the Master's office, had given credit for considerably less than the just amount, the Master therefore reported, that the defendant had not fairly brought to account the property in question. Exceptions were taken but overruled. Finally, it is said in the minute, "a decree on all points raised by the defendant, was made against him, when a further controversy was raised by him as to his own liability to costs, on the ground of being an executor." The cause had come on upon the exceptions and for further directions, and the exceptions being overruled, the only points remaining, were, whether the defendant had made out his defence, want of assets, and who should pay the costs of the suit. The estate was found indebted to the defendant in 884 rupees; so the result of the suit as to the principal point, want of assets, was decidedly in his favour. Still he was ordered to pay to the complainant all the costs of the suit, and, as he had acted dishonestly in filing false accounts, I think, if the court had power to do so, it exercised a sound discretion in ordering him to pay the costs. In Robinson *v.* Elliott, 1 Russell, the result of the account in the Master's office, was, that there were no assets unadministered, but the executrix was charged with more than she had admitted in her answer, and therefore, although the bill against her was dismissed, it was dismissed without costs. The case before Sir Erskine Perry was much stronger. In Nicloson *v.* Wordsworth, Lord Eldon intimated, that where a bill is dismissed, a defendant may be ordered to pay the costs; and see Mortimer *v.* Orchard, before Lord Loughborough, and Anon., 4 Madd. 273. In this country the courts exercise a very wide discretion in such matters, but I am not aware of any exact precedent for the order in question, and therefore feel no surprise at there having been a controversy as to the liability of the defendant.

In my letter of the 4th August 1843, I expressed opinions that stagnation in the China trade and in mercantile affairs in general, had latterly caused litigation to decrease; that such effect was temporary, and that there was then nearly as much business in the court at Bombay as there had been at any time during the ten preceding years. This view was in no respect refuted by the schedule

schedule of cases heard and actions tried during the years 1840, 1841, 1842, annexed to Sir Erskine Perry's minute. In the 4th paragraph of the minute, that schedule is referred to as showing the amount of business in the court. In the 6th paragraph, it is said, that although the number of suits in the mofussil courts is annually increasing, those in the Supreme Court decline in a like ratio, and in a note upon the latter statement it is said, "The number of plaints filed on the common law side of the court, have fallen off 20 per cent, during the last three years, as taken on an average of the preceding ten years." It follows that the schedule thus adduced as evidence of the small amount of business in the court, had merely reference to that period in which there had been the least business during the thirteen preceding years; and so far from there having been evidence of an annual decline of business, the schedule showed that the amount of business in the year 1842, exceeded that of either of the next two preceding years. In fact, the schedule tended to establish my belief, that interruption of the China trade had caused a decrease of litigation, and that such effect was merely temporary. The opium was surrendered in March 1839, and in the Dewallee of that year scarcely any accounts were adjusted. European and native merchants exerted themselves to induce creditors in the bazaar to show forbearance to their debtors, as was in evidence before the Committee of the House of Commons appointed to inquire into the surrender of the Opium. Hence in 1840, the first year to which the schedule referred, there was but little doing; there was but still less in the following year, but towards the end of that year the trade was to some extent resumed, and it became certain that compensation for the opium would be granted, and accordingly in 1842, law business considerably increased. It had still further increased when my letter of August 1843 was being written, and it may be concluded, that a further improvement has taken place, inasmuch as the first three terms of the present year have been insufficient for the transaction of business, and sittings after each term have been required.* My opinion is further confirmed by that of a professional gentleman of considerable experience. He has expressed his belief that the amount of wholesome litigation in the court at "Bombay, has increased rather than diminished," adding that "much business is now kept out of the court that in former days probably would have found its way there." Above four years ago I understood from Mr. Cochrane, who had been at the Calcutta bar, that more solid business was transacted in the court of Bombay, than in that of Calcutta, where, I believe, much time was formerly occupied in disposing of demurrers, exceptions and such like proceedings, which, unless founded on some substantial question, and not upon mere points of form, have been, for several years, utterly discountenanced at Bombay. On the whole, I doubt whether at the present period judges are more occupied at Calcutta than at Bombay, especially as at the latter place three of the criminal sessions for the present year have already occupied above 52 days, with the exception of Sundays and two or three holidays, and the fourth session is yet to come. But the criminal business during the present year, has been unusually heavy, and one case occupied nine days, and another three days.

In my letter of the 4th of August 1843, I said the cost of litigation in the Supreme Courts was very great, and ought to be diminished, but the expenses incurred on the plea side of the court at Bombay are, I believe, somewhat incorrectly stated in the 8th and 9th paragraphs of Sir Erskine Perry's minute, and in the schedules to which they refer. His estimate is, "that a defended cause in the Supreme Court costs the losing party about 1,200 rupees, that an undefended cause costs about 450, and that even in causes when the defendant confesses the claim or gives a cognovit on the first opportunity he has to do so, the expenses amount to no less than 189 rupees." It appears that the number of cases from which this calculation was made, included those cases in which, owing to peculiar circumstances, such as references to arbitration, special motions, &c., extraordinary costs were incurred. Thus, although the estimate may be correct,

* During the fourth term, which commenced and concluded after the above passage had been written, there was but very little business, and it was all disposed of in a very few days. This has been chiefly attributed, and I believe, justly, to the absence of a principal counsel, and to the illness of an attorney, who was in considerable practice. He became unable to transact business shortly before the term began, and died a day or two before the term ended.

correct, as giving in one sense the average amount of costs in each of all the cases forming the mass of the litigation in question, it seems erroneous to intimate, as in the 9th and 22d sections of the minute, that in an ordinary action such expenses are incurred. The taxing officer has furnished me with tables and calculations upon the subject, founded on examination of the registry of bills of costs in his office for the same three years specified by Sir Erskine Perry. The officer tells me, he has taken "the cases which appear to him to determine the general and usual costs in defended causes, undefended causes and cognovits for those several years. Where the costs included arbitrations, special motions or matters of exception, they are not inserted, as the costs in such cases are special rather than general."

According to the taxing officer's estimate, corroborated by tables which accompany his statement, the cost of a defended action to the losing party is about 800 rupees (Sir Erskine Perry's estimate is "about 1,200 rupees"); the costs of an undefended action are about 192 rupees (Sir Erskine Perry's estimate is "about 450"); and where a cognovit or confession of the claim is given, the average costs have been 147 rupees (Sir Erskine Perry's estimate is "189 rupees").

The amount of fees to counsel in the defended cases from which the above estimate was made has also been ascertained, and thence it is stated that on an average, 239 rupees have been paid to counsel in a cause, leaving about 561 rupees for the remuneration of attornies on both sides, and the officers of the court.

These costs, in my opinion, are too high; but considering that during the five years including 1839 and 1843 judgments were recovered by plaintiffs in the Supreme Courts in 338 causes, defended and undefended, for the amount in the whole of 17,69,970. 2. 1½., and that the taxed costs of the plaintiffs in such cases amounted in the whole to 53,890. 3. 76., being at the rate of about three per cent. upon the sums recovered, I doubt whether there be such disproportion as is intimated in Sir Erskine Perry's minute, between the cost of suing in the Supreme Court and in the courts of the East India Company. In the latter, according to the second Bombay Regulation of 1827, section 52 and Appendix (L.), the fees to a vakeel for prosecuting or defending a suit, are three per cent. on the amount sued for, if not more than 2,000 rupees; if the amount exceeds 2,000 rupees, and does not exceed 10,000 three per cent. on 2,000 rupees of the amount, and two per cent. on the remainder; in suits for value not exceeding 20,000 rupees, three per cent. on 2,000 rupees of the amount, two per cent. on 8,000 rupees of the amount, and one per cent. on the remainder. Though the fee upon any amount above 20,000 rupees was formerly half per cent., I believe it is now fixed at one per cent. Each party is generally bound by special agreement to pay a much larger per centage to his own vakeel in the event of his succeeding; sometimes one-fourth, sometimes, it is said, one-half. I have known evidence of such agreements on two or three occasions before the Supreme Court at Bombay. The Stamp-tax on law proceedings is also very heavy.—*See* Bombay Regulation XVIII. of 1827, Appendix (C.), (D.), (E.) and (F.)

Suits for small amounts may be conducted at a cheaper rate in the mofussil courts than in the Supreme Court; but the larger the value sought to be recovered in the former tribunals, the greater becomes the cost, and in an extravagant ratio, especially as appeals from such courts so frequently occur. In 1834 or 1835, there was a decree against one Heerachund Bedreechund, in the Supreme Court, for upwards of 14 lakhs, and another man is now defendant in a suit in which about 14 lakhs are claimed from him. What enormous sums might be levied from parties to such suits in a mofussil court by way of charges for stamped paper, fees to vakeels and the share of the vakeel of the successful party. The Bombay Government being engaged in a suit about a village in Guzerat, producing about 12,000 rupees per annum, the case went before the Privy Council. The Government, I understand, had to pay 60,000 rupees as costs, of which perhaps one-half were costs incurred in this country. I have been furnished with the following case, which has recently occurred. Two Hindoo women disputed the right of heirship to a wealthy shroff; one of them obtained a certificate of heirship, which was confirmed by the Sudder Adawlut; the other filed a suit to annul it, and obtain possession of the property. She stated the property in dispute at one lakh (it is said to be many lakhs); the stamped paper for the plaint was therefore 1,000 rupees. The assistant judge dismissed the suit, on the statements in the plaint, without taking evidence. The costs of both parties were

were 3,941 rupees. On appeal, the judge reversed the first decree without taking any evidence, and merely annulled the certificate of heirship. The costs of both parties in that appeal were 3,186 rupees. They have a further appeal pending before the Sudder Adawlut, the costs of which will be about 2,480 rupees to the unsuccessful party, exclusive of fees to her own vakeel, and irrespective of the private agreement for bonus or per centage upon which the successful party will be liable.

I believe the expense of suing in the Supreme Court chiefly arises from the cost of office copies of the pleadings and fees to the officers of the court. If those officers were paid by the Government, as it is proposed the officers of the projected court shall be, or if compensation were given to present holders of offices, pleadings might be delivered between the parties instead of being filed. They might be handed in at or shortly before the trial or hearing, and would furnish materials for making up the record. Under such a system, the costs of suitors in the Supreme Court would be much less, I believe, than those at present incurred in the courts of the East India Company.

Of late years much has been done with a view to lessen the expense of pleading in English courts of law and equity, and much more, I think, might easily be done. In equity, all formal parts of pleadings should be excluded. Merely the legal effect of written instruments should be set forth. Answers might be confined to traversing the plaintiff's case, and stating the defendant's, and no admissions could be required in the answer, if the plaintiff were allowed to read, as admitted, whatever was not denied. Perhaps the complainant should not be permitted to anticipate the defence in his bill; anomalous pleading and much nicety and repetition would thus be avoided. The introduction of vivâ voce examination of witnesses in equity, and of both parties, as well in law as in equity, would at once abolish the preparing interrogatories for witnesses, and the interrogating part of the bill. Or if the vivâ voce examination of parties be held inexpedient, they might be examined on interrogatories founded on the bill and answer. If, however, vivâ voce examination were adopted, the same precise statement of matters of evidence, at present usual in the bill and answer, should be no longer requisite, and thus much benefit might result to the parties.—*See* Hall *v.* Maltley, 6 Price. Cross bills might thus be abolished, and a defendant in equity might be permitted to ask the court to declare instruments sued on, fraudulent, and to order them to be cancelled. Several other changes might be suggested.

The expense of litigation probably operates, not progressively, or in causing a gradual or annual decrease of business, as seems to have been supposed, but by prescribing limits proportional to the value of matters in dispute, so as to preclude having recourse to a costly tribunal for what may not be worth heavy charges for a suit. The Supreme Court is a forum unsuitable to small matters, which should be disposed of in some such court as that proposed by the Law Commissioners, more simply and less expensively organized. Courts of the latter description can also, in their manner, decide affairs of greater moment, and whether their jurisdiction should therefore be unlimited, appears to be a question arising on the Report. Unless their ability to dispense justice be fully equal to that of a Supreme Court, I conceive their authority should not be extended. No doubt such courts will be popular, for recourse may be had to them on cheap terms. In general, they will be resorted to in the first instance, to the exclusion of any more costly tribunal, charges for suing in which will not be incurred unless upon appeal, if permitted, from alleged erroneous decisions of less expensive courts. It is proposed to allow an appeal from the court of the Law Commissioners, but how greatly is a right prejudiced by an erroneous decision in the first instance. How difficult does it then become to obtain justice by appeal. There is usually a disposition in the Superior Court to uphold the judgment already given, which must have considerable effect even when the case is tried de novo, and where credit to any extent is given to the inferior tribunal for accuracy. As to facts, how completely may points of law be swamped by an improper finding. Courts of appeal are not always, or, perhaps, often resorted to, where error has occurred, and even when applied to are but imperfectly corrective. It is therefore important to adopt means for dispensing justice as fully as may be in the first instance, especially considering the many ways in which imperfect administration of law has pernicious effects upon society. A better

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description of tribunal may be costly, but the expense should be defrayed by the State or by suitors. I believe much moral and political mischief results from defective courts, and that, therefore, they should have but a limited operation. To a certain extent they have been hitherto necessary evils, for without them claims of small amount would have remained unsetted. If their jurisdiction cannot be restricted to such matters without expense to the State and to the richer classes of suitors, I still believe it consistent with the interests of the community that the State, or wealthy suitors, should bear the cost of maintaining better courts for more important affairs, having original, and not merely appellate jurisdiction. Such superior tribunals influence inferior courts in various ways, and tend to purify them not a little. Into what state would courts of requests and judicatures of that description degenerate in England, if the courts at Westminster were abolished, or what would the small cause court at Bombay in a few years become, if the Supreme Court were not within view of the judges at that Presidency and the public.

Thus, unless the forum proposed by the Law Commissioners should be better instructed, and capable of arriving more nearly than the Supreme Courts at a perfect administration of justice, I think its jurisdiction should be limited to small affairs, and that its being the cheaper court should be accounted a matter of secondary importance.

But the superiority of such a court as means of distributing justice, seems to be thought sufficiently established by several criterions. It is said, in the first place, that it would carry off the business from the Supreme Court. I have no doubt it would, for as being the less expensive court, suitors, even the wealthiest, would resort to it; they would first try their chance there, and only have recourse to a more expensive tribunal if the latter had cognizance of appeals from the former, and an appeal had become necessary or expedient, and thus matters might go on till such evils had resulted from a bad judicial system as rendered a change or remedy indispensable. If measures were taken to enable honest litigants to sue upon the same terms with regard to charges in either court, the Supreme Court might, and, I believe, would be preferred.

The unfitness of Supreme Courts for the distribution of justice is also contended for on the ground that their business gradually decreases, whilst that of the mofussil courts is annually increasing. I have already dwelt on the alleged progressional decrease of business in the former courts, and, I trust, have shown that it did not exist, and if the business of mofussil courts has increased as compared with that of Supreme Courts, it may be that such a state of things has arisen from the comparatively defective administration of justice by the former. Rights will be invaded or withheld under a very imperfect judicature, more frequently than where the administration of justice is comparatively equable and certain, and I have long believed that the common notion of natives of India being more litigious than the rest of the world has arisen, because the very imperfect judicial system under the India Company engenders litigation, which they who are blind to existing defects, ascribe to a peculiar character in the people.

The relative merits of Supreme and mofussil courts can scarcely be estimated from the quantities of business transacted in them respectively. Appeals to the Supreme Court from subordinate jurisdictions are almost unheard of, for the latter tribunals are chiefly occupied in small matters not worth the expense of an appeal. In each of the mofussil courts, except the lowest, there is much business from appeals; no slight evidence of a defective judicial system.

The leading or principal natives at Bombay are greatly averse to appearing as litigants, which they seem to consider as a disgrace. During the last September term, there was an important case respecting a ship called the "General Wood," which would have been kept back had not an English merchant consented to appear as sole plaintiff on the record; several natives were joint owners, but declined to let their names appear. I am not aware that such feelings have much influence in the mofussil.

Chief members of the native community at Bombay seek to acquire importance as patrons or protectors, and to this end are much employed in inducing litigants to accept their mediation. Much apprehension of their displeasure is apparently felt, and considerable sacrifices are made to propitiate them. With

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that view in a recent case, a party compromised for a sum of money an indisputable claim to a much larger amount, full payment of which could have been easily enforced.

The Supreme Court gives little encouragement to fraudulent or frivolous suits, a description of business which, I have been told, is rife in the mofussil, and, by the advice of both branches of the profession at the Presidency, much litigation is prevented respecting matters which give employment to the provincial courts.

Lastly, the Supreme Court only exercises jurisdiction over comparatively important matters, those of minor consequence being disposed of in the small cause court and the court of requests. The zillah courts entertain the most inconsiderable suits, suits for less than a rupee.

Under such circumstances it is difficult to draw comparisons founded on the quantities of business which the courts in question respectively dispose of. I believe there is excessive litigation in the mofussil courts, and I attribute the excess to a very faulty judicial system.

Many years ago, on first arriving in this country, I also was told and swallowed much as to the excellence of provincial courts, till certain particulars from time to time came to my notice, which somewhat abated previous estimates of their merit. At length, about the year 1832, a case for opinion detailed proceedings in a suit respecting a very simple matter, which had been carried through inferior country courts into the Sudder Adawlut. In every stage such errors and improprieties were said to have been committed, that I utterly disbelieved the statement, and in writing my opinion expressed unqualified disbelief accordingly. Some months afterwards a gentleman in the civil service of the Company told me he had read the opinion, and assured me that the case had been truly stated. Such an authority left no room for doubt, and such proceedings, I am confident, could not have occurred, unless under a grossly defective judicial system. Prejudice may influence my judgment of such matters, but I rely on the opinion of others whom I believe impartial, as well as upon my own, in professing a belief that the Company's courts are unequal to the administration of justice, owing to several causes, some of which it may be useful to specify, as similar evils will, I think, affect the court of the Law Commissioners.

Civil servants who preside in the Company's courts have had no professional education or experience. Hence they imperfectly comprehend rights and wrongs involving nice distinctions, or modified or rendered complex by manifold relations arising from the business of life, and they have no power of ascertaining how, in like cases, legal principles have been previously applied. Unguided by rules of law or evidence, they are easily misguided in various ways through prejudice or passion, and being left much in their own power, they may allow others to exercise power over them. They become partisans more frequently, and when thus affected are more mischievous than professional judges, for they are less under control. It often happens that the Serishtadar has great influence with the European judge of a provincial court, especially as such judge is generally but imperfectly acquainted with the language in which the proceedings are carried on. I am told he is seldom able to read or write it without difficulty. The proceedings are therefore read to him by the Serishtadar, who also records the evidence; and although the judge may sometimes dictate the words of the decree, I understand that is not always or often the case, and the decree is almost uniformly written by the Serishtadar. What power may not that officer possess? and where the judge is ignorant, or indolent and confiding, what mischiefs may or must arise.

Sir Erskine Perry expressed his disapproval of unprofessional judges, in a minute upon the inexpediency of establishing, at Bombay, a small cause court, similar to one proposed to be erected at Calcutta in the year 1843. The minute was sent to the Government of Bombay, along with a letter I had written on the same subject, dated the 6th January 1844. It appears from the 2d and 13th sections of the proposed Act for establishing the new court recommended by the Law Commissioners, that such court will be subject to the defect in question, and that all the commissioners thereof, except the chief, may be without any legal education. Difficulties in law may easily escape the observation of an unprofessional commissioner; and it is not improbable that, in his ignorance, he may make light of them, or disregard them, especially as ample scope for self-sufficiency is provided, by leaving it dependent on his own opinion of his own

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ability, whether the suit is to be proceeded with before him, or to be transferred to the chief commissioner.

On a former occasion I observed, that there is no expression of sound public opinion in India, where the presence and intervention of professional men are the most effectual, if not the only checks upon the errors and infirmities of a judge. That great benefits otherwise arise from the employment of counsel, is apparent from Sir Erskine Perry's letter to the Government of Bombay. In the 30th paragraph, he says, "The eminent advantage of such (legal) assistance is so obvious, that no one would fail to avail himself of it, when within his reach, if his rights or possessions became the subject of legal discussion." In the 29th paragraph, he says, "It is true that in such cases (where parties are not wealthy enough to employ the assistance of counsel) the court, in the absence of any forensic advocacy on either side, would often fail in discovering points material to the issue, points which the parties themselves might be blind to, and the law delivered would be frequently inferior in quality to what it would have been after hearing all that legal acuteness and industry would suggest."

In this country the advantages accruing from the employment of counsel are peculiar to the Supreme Courts; for although there are vakeels in the courts of the East India Company, they are ignorant men of very inferior station in life, and are incapable of instructing or controlling the judges before whom they practise. They are permitted to contract with their clients for additional rewards or commission in case of success, and hence they become seriously interested in the result, and are under temptation to tamper with witnesses, and to resort to other fraudulent proceedings.

In the last paragraph of my letter of the 4th of August 1843, I intimated my belief that the establishment of such tribunals as the Law Commissioners recommend, would cause the annihilation of the bar at each Presidency, or that, at all events, counsel would seldom be employed. Sir Lawrence Peel is of opinion, that such a consequence would not ensue, at least, at Calcutta, and I have no doubt that if it did not take place at Calcutta, it could not at Bombay. Sir Erskine Perry thinks the projected courts would open a much wider field for forensic talent and employment. After long consideration, I retain my original impressions about the matter, for the following reasons.

In the small cause court at Bombay, so much referred to for its supposed similitude to the court of the Law Commissioners, counsel are but little employed. Sir Erskine Perry says, "The eminent advantage of legal assistance is so obvious, that no one would fail to avail himself of it, when within his reach, if his rights or possessions became the subject of legal discussion." My experience of the small cause court leads me to a different conclusion. The dealings of many litigants therein prove them to be men of substance, and some money-dealers who often resort to it, are personally known to me, and I have no doubt they are wealthy, and yet counsel are seldom employed in that court, and very seldom indeed by those who, from frequent experience, may have acquired greater skill in the conduct of their suits. The clerk or officer of the court, if applied to, becomes agent and legal adviser to both parties, pretty much as the judges of the court of the Law Commissioners are to act. But although the agency of attornies is thus dispensed with, it often happens that a party, distrusting the officer of the court, and reluctant to confide in one who is the confidant of the other party, employs a native lawyer to manage his case, and it is chiefly where native lawyers thus conduct the business, that counsel are retained for the trial. The chief reason for thus resorting to professional assistance may be, that although the officer of the court nominally prepares the brief, the native lawyer often adds observations or the names of witnesses, and probably extracts some additional fees for himself. This alone may induce the native lawyer to advise his client to retain a barrister, for when we find that counsel are not much employed by suitors of skill and experience, it may be doubted whether the services of counsel are so beneficial in the small cause court as in tribunals differently constituted; and the retaining of counsel in the small cause court seems but little dependent on the difficulty or simplicity of the case. In cases of some difficulty even between wealthy parties, barristers are not usually employed, whilst they are sometimes retained for the trial of very simple matters. Generally, when counsel appears, the case, however simple, lasts much longer than it would otherwise, and cannot be so summarily disposed of.

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Sir Erskine Perry says, in a note to the 30th paragraph of his letter to the Government of Bombay, "The elicitation of truth amidst conflicting statements, the clear exposition of principles from circumstances," immersed in matter, "and the logical reasoning required to bring these principles within the rules of the law, are operations so immeasurably better conducted by men trained in legal science and controversy at the bar, than by the common herd of mankind, that it seems to me clear their services can never be dispensed with." To me, on the other hand, it seems clear their services will be dispensed with whenever they can be dispensed with; and that they can be dispensed with in such a court as that recommended by the Law Commissioners, and in the small cause court at Bombay. The fact that in the latter court they are, to a very great extent, dispensed with, in some degree establishes the proposition.

Professional aid is costly, and although the above-mentioned advantages arise from it, and therefore great benefit to society, yet the expense falls directly upon suitors, and will not be incurred if success can be obtained without it. The court of the Law Commissioners will be, like the small cause court, so constructed, that although barristers may practise therein, their assistance may yet be dispensed with, and when employed by one party only, may sometimes tend to the prejudice of the client, owing to the infirmities of the judge. I believe it is essential to the advancement of justice that both parties be represented by counsel, and that will not always, or perhaps often, be the case where practically, as in the small cause court, the employment of professional aid is optional, and the retaining a barrister on one side does not render it necessary or expedient that the other party should appear by counsel also. In such a tribunal, where neither litigant is assisted by counsel, the judge endeavours to decide impartially, and his efforts may be successful, although, as Sir Erskine Perry observes, he may often fail in discovering points material to the issue, and the law delivered may frequently be inferior in quality to what it would have been after hearing all that legal acuteness and industry could suggest. If counsel appear for one only of the parties, the judge may fail in his efforts to be impartial, for it lies upon him to be legal adviser on the other side; it depends on him alone to combat fallacies and sophistries advanced by the barrister, his competitor; his feelings may, and, I believe, often do become interested to the injury of his judgment; a leaning to the side he advocates is engendered, and he may unconsciously become a partisan. Perhaps these considerations have weight with the experienced suitor in the small cause court. If he and his opponent be alike without professional aid, they are so far on equal terms. Should his adversary alone have counsel, he may think the judge may, therefore, lean towards himself; and on his part, he may be reluctant to be the only one to retain a barrister, lest the court should contract a leaning to the side unprovided with such support. In criminal trials, if there be no counsel for the prosecution, I think a culprit has less chance of escaping when defended by council, than if he be without such assistance, unless there be some point of law decidedly in his favour which might escape the notice of the court, or unless there be a good defence to be substantiated by witnesses, for examining whom professional skill may be important: I have reason to believe that persons under criminal charges have sometimes been advised to the like effect.

The grounds on which I thus account for the services of counsel being, to a great extent, dispensed with in the small cause court at Bombay, will equally affect the court of the Law Commissioners, in which I, therefore, think professional aid will be very seldom resorted to, although it is probable that native lawyers and other low practitioners, like vakeels in the provincial courts, will often be secretly consulted. Indeed, the 18th section of the proposed Act for establishing the court, should it become law, will, in itself, go far to exclude counsel from practising. A power in the judge to declare whether the assistance of a lawyer was reasonably required or not, I have no doubt would often be capriciously exercised, according as piques or partialities arising from the deportment of counsel, and various other causes might influence the judges' mind. Besides, the unprofessional commissioners will be, in a great degree, imcompetent to form opinions on the subject, and it is not improbable that barristers may refuse to practise before them. But little utility or satisfaction can arise from discussing points of law with men wholly ignorant of the science.

If the sciences of professional men be virtually excluded, the evils pointed out by Sir Erskine Perry must arise, and judges will often fail in discovering

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points material to the issue, and the law delivered will be frequently inferior in quality. If the court of the Law Commissioners should be defective in such important particulars, and if it should become, as is intended, and, I doubt not, will be the case, the only court at each Presidency, must it not prove highly detrimental to the prosperity and morals of society.

Other defects in the provincial courts arise from the mode of pleading therein. In the 4th Bombay Regulation of 1827, rules for pleading are prescribed. They are so general that under them a very good system might be pursued, but the pleaders and the judges in those courts are unprofessional, and, perhaps, very properly under such circumstances, there are no provisions for enforcing conformity to the rules, which in practice are but little attended to. I have now before me some specimens of the pleading which, in fact, occurs. They are prolix, inconclusive, impertinent, argumentative, declamatory and discursive. Hence, not only are they more protracted than pleadings in the Supreme Court, at least, on the plea side thereof, but departures in pleading are frequent, the grounds of suit and of defence are shifted; immaterial issues arise, and matters really important are overlooked. Moreover, it frequently becomes difficult to ascertain whether any and what issues have arisen, or whether any and what evidence is required. Problems which, under the 23d section of the Regulation, the judges of the courts in question have to solve, and to that end are obliged to consult and have intercourse and interviews with the parties, whereby prejudices and prepossessions are engendered. So far as pleadings in the court projected by the Law Commissioners shall be prepared by unprofessional men, I have no doubt the evils alluded to as occasioned by ignorant pleaders; whether professional or unprofessional are also to be the judges, and further, are to act as legal advisers to the parties, I am confident they will very often become partisans, arbitrary and unjust; especially as, in a short time, there will be no other tribunal in view to control or afford a better example, and as counsel, if my opinion be correct, will seldom or never practise in the court of the Law Commissioners.

It is said that pleading or special pleading is inapplicable to India, because "it is almost impossible that a race of men like special pleaders should flourish in this country, and from the remarks of Sir L. Peel, Sir Erskine Perry gathers, that the statute of Beaupleader is as much a dead letter at Calcutta as it is at Bombay." During my experience of nearly 16 years at the latter Presidency, I have seen several barristers whose reasoning powers were well developed, and who, I believe, are and were (for some are dead) not incompetent as pleaders. Pleaders go wrong occasionally in England, more frequently in India, but in the latter country they are pretty much on a par as to the science with the judges before whom they practise. Consummate skill, however, is by no means essential either to the bench or bar, and it is obvious that pleaders, however imperfect, are more likely to attain the ends of pleading by aiming at a perfect system, than by avowedly adopting one which is inaccurate and incomplete, or by disregarding the rules of pleading altogether. A great deal of what is complained of as technicality in pleading, is founded on analysis of the intellectual faculty, and is in conformity with and in furtherance of the operations of logical minds occupied in determining a dispute. There was a time when, through excessive strictness, the end was often sacrificed to the means; justice, to a blind adherence to certain rules prescribed for its attainment, but by due relaxation of which their object is frequently secured. Accuracy should be required to a salutary extent, or the rules of pleading, as in the provincial courts, will soon be disregarded, and it is very difficult to ascertain the medium between over indulgence and being extreme, to mark what is done amiss.

If a just remission of rules, and due indulgence as to amendments be truly and uniformly aimed at by the courts, the whole system will be progressively ameliorated, and the mischiefs of occasional or frequent error will be greatly remedied. Sir Erskine Perry commends the practice in the small cause court, of referring all technical errors in the pleadings to the jeofail of the clerk. Such a practice may be safely carried to an unlimited extent in that court, where the officer acts as agent to both parties; under such a system, it seems impossible that a technical error can mislead either party. In the Supreme Courts, it might be a rule that, at the trial, no pleading shall be held invalid on account of verbal or technical error; that the court shall decide what is verbal or technical error; that all mistakes which shall not have misled the opposite party shall be deemed merely technical or verbal, and that where such mistakes have occurred, the

pleadings

pleadings shall be construed and altered according to the meaning of the parties.

For a long period, as already mentioned, demurrers for matters of form have been discountenanced in the court at Bombay, and are therefore very rare; but previous to the trial, certain errors in pleading may be objected to, which, with a view to enforce due attention and skill in pleaders, ought not to be excused; for instance, errors which preclude the opposite party from logically taking issue. Such defects may be considered by some persons as merely technical or verbal, but they are substantial, and not merely formal.

The court at Bombay has exercised such powers with respect to amendments, &c., as are conferred on courts of record and judges at Nisi Prius in England, by 3 & 4 Will. 4, c. 42, ss. 23, 24. In this, the profession appeared to acquiesce, and perhaps the authority might be assumed, or the like ends obtained under the clauses in the charter directing the court to give judgment according to justice and right.

The Law Commissioners object chiefly, or solely, to the mode in which neglect of the rules of pleading is visited upon suitors, and the consequent mischief. They allege that this can only be remedied by what they term oral pleading, but which in fact is written pleading, prepared by the judges or commissioners of the court. Sir Erskine Perry, on the contrary, proposes to abolish pleading altogether. What he terms oral pleading, consists in the story of each party being told orally, and if there be no consequent reduction to writing, there is in fact nothing that a logician can call pleading, especially if every suitor is to tell his own story without professional aid. He obviously advocates the total abolition of pleading, because in the 22d section of his minute he repudiates an essential quality of every system of pleading, the separation of the law and fact; and in the 28th paragraph, he even denounces the petition and answer system, of which he says, "This mode of procedure contains within itself all the inherent defects of special and equity pleading. The suitor's story is not told by himself, but by his legal adviser." In the previous sentences he had said, the petition and answer system "has uniformity and simplicity to recommend it. Any one can draw a petition. No inveterate forms oppose themselves as obstacles to prevent the judge from finding his way to the fact in the case." He cannot mean to intimate that although a petition be uniform, simple and free from inveterate forms, so that "any one can draw a petition," it necessarily contains within itself, all the inherent defects of special and equity pleading, or that the story told in a petition is necessarily told, not by the party himself, but by his legal adviser. This 28th paragraph, in fact, imports that a party himself, and not his legal adviser, should tell his story to the court; and that a party is not even to employ the simple uniform petition, which any one can draw, as a vehicle for his story, but should tell it orally himself, without using any written pleading whatever. The note upon the 21st paragraph of his letter to the Government of Bombay, it appears to me, confirms this construction. He therein concedes to the Law Commissioners "the use they propose to make of certain rules of special pleading which have been found effective in practice," and subsequently adds, "I conceive, however, that if written pleadings are abolished, and with them the greater part of the technicalities with which written pleadings are accompanied, it is a misnomer to apply the designation of special pleading to a new system in which only a few of its rules are adopted." Thus, he contemplates the abolition of written pleadings, and five minutes' reflection will convince many a man that if written pleadings be abolished, no logical pleading can easily be carried on. In fact, Sir Erskine Perry intends there shall be no pleading whatever beyond the telling of his story by each party, for there is nothing in the minute to import that, according to his plan, any thing further is to take place, although we may conclude the judge or officer is to be at liberty to make notes.

The Law Commissioners, on the other hand, propose a widely different system; for they intend that, from the oral pleading of the parties, or their agents, written pleadings shall be framed, not by a professional adviser, indeed, but by the commissioner or judge. Nor do they intend, as Sir Erskine Perry assumes, to use certain only of the rules of pleading; for in their Report they say, "In the Supreme Court there are the elaborate rules of English pleading, calculated for the most part, as we believe, to produce the best results, when they are observed;" and further on they say, "The logical rules which constitute the essence of pleading are of universal application;" and using the words of Mr. Serjeant Stephen,

Stephen, they term special pleading "a fine judicial invention;" and they object to the oral pleading in the court of requests as not being subjected to any rules, whilst the rules they prescribe in their draft Act, section 12, for pleading in the intended court, might embrace an elaborate system. That they intend a pleading much more special than Sir Erskine Perry advocates, is apparent from their precepts to separate law and fact; that pleas be kept distinct from demurrers; and that no plea be double or argumentative, &c. There are no provisions, however, for enforcing adherence to the rules, which I have therefore no doubt would soon become, like rules for pleading in the provincial courts, mere dead letter. Through want of skill and experience, the unprofessional commissioners would be incompetent to carry out the system, and through want of responsibility, and consequent inattention, the professional commissioners would soon become almost equally inefficient; and therefore, even as matters stand, I have no doubt that pleadings at law, in the Supreme Courts, are more concise and sufficient than pleadings would be under the system of the Law Commissioners.

In the 11th paragraph of his minute, Sir Erskine Perry expresses himself to the effect, that, "so far as his experience goes, the immense expenditure which attends a trial in the full court, is not rewarded by bringing the case to be tried a whit more satisfactorily before the judges," than it would be brought before them in the small cause court. I have already said that barristers are seldom employed in the small cause court; but, by the passage above quoted, Sir Erskine Perry does not mean that no benefit results from the attendance of counsel at a trial; such a construction would be irreconcileable with the opinions subsequently given in his letter to the Government of Bombay, as to the advantages accruing to judges and suitors from professional services. He intimates, I conceive, that the written forms adopted for bringing a case to trial in the small cause court, are as effectual and satisfactory as the mode of pleading in use in the Supreme Court. I concur in that position so far as the jurisdiction of the small cause court, and the forms of declaration used therein, are concerned; but thus far there is little difference between the latter court and the Supreme Court. The process of the small cause court is confined to actions for debts and liquidated damages, in which the cause of action does not exceed 350 rupees. A very simple form of declaration is prescribed, which in itself affords but little information as to the nature of the claim preferred, a knowledge of which is acquired by the judge, and perhaps by the defendant, from statements made by the officer, and from the bill of particulars which accompanies the declaration. Thus, there is little that can be called pleading, on the part of the plaintiff, in that court, especially where the claim is founded on an indebitatus assumpsit, and the like observations may be made as to similar actions in the Supreme Court, for the money counts are as simple and as brief as the counts adopted in the small cause court, and in themselves afford as little information as to the ground of action. The same also may be said of other forms of declaration used in the Supreme Court. What can be more general or vague than a declaration in trover or ejectment? what particulars of the suit can be collected from such preliminary pleadings? In each court the declaration on a bill of exchange or promissory note is somewhat more explanatory, for it describes the note, and shows whether the defendant is sued as drawer or acceptor, &c.; but since the new rules were established, the counts on bills and notes in the Supreme Court are as simple and brief as declarations on such instruments in the small cause court. On the whole, it seems to me, that in actions for debts and liquidated damages, and for several other matters, it signifies little what form, or whether any form of declaration be adopted. It is only requisite that the defendant have notice of the claim preferred, and that may be communicated in various and very simple ways. When relief is sought, either in law or equity, upon unusual grounds, more precision in the introductory pleading may be expedient.

If, therefore, the declarations used in the small cause court be similar to those employed in like cases in the Supreme Court, it may well follow that, so far, a case for trial is brought before a judge as satisfactorily in the one court as in the other; but my concurrence in the opinions of Sir Erskine Perry on this subject goes no further; for in the small cause court there is virtually no pleading at all on the part of the defendant, who alleges he is not indebted, or makes some statement equally vague, and under such a plea is permitted to adduce any matter which may form a defence to the action. Although this answers in the small cause court, where the officer acts as agent or legal assistant to both parties,

parties, and is thus previously apprised of the defence to be set up, I cannot think with Sir Erskine Perry that a case is not brought before the judges more satisfactorily in the Supreme Court than in the small cause court; for, in my opinion, the procedure in the small cause court is chiefly defective, because the officer of that court acts as agent and legal adviser to both plaintiff and defendant. The mode of pleading in question may be the best which could be adopted under what thus appears to me a very imperfect system, but it does not remedy what I consider the defect; and that mode of pleading would be insufficient in the Supreme Courts, where, as in the superior courts in England, the respective litigants have each his own professional agent and adviser. Formerly, in those courts, a very vague, general style of pleading, on the part of the defendant, was admitted in cases of the same description with those within the jurisdiction of the small cause court, but in order to obviate the consequent inconvenience, and the necessity thereby engendered for the plaintiff coming armed at all points, new rules requiring greater precision in pleading on the part of defendants, were prescribed, first in England, and afterwards in the Supreme Courts of India. Still, in many important matters, great latitude of pleading is allowed to defendants in the superior courts, as well in England as in this country; but the effect of the new rules has been the introduction of greater precision in pleading by defendants; and, considering that those rules were framed by the judges of England, we may hesitate to yield to the opinions of those who would virtually abolish pleading altogether.

But the small cause court at Bombay, it is argued, has succeeded, and therefore the proposed court must be successful. The jurisdiction of the small cause court is limited; that of the proposed court is to be unlimited. The small cause court co-exists with the Supreme Court, a better tribunal, affording to judges, suitors and the public an example, as I believe, of a better administration of justice, and the judges, being chiefly occupied in the latter court, are less liable to become arbitrary, negligent or ignorant. The proposed court will soon become the only tribunal at each Presidency; for, as the cheaper forum, it will carry off all business from the Supreme Court, especially as it is probable the judges of the former will be unable to resist a leaning on their parts towards the plaintiffs. It is well known how business increased in the Court of Common Pleas in Ireland, owing to Lord Norbury's inclination to the plaintiffs.

In the 30th section of his minute, Sir Erskine Perry speaks of examination of the parties as adopted in the small cause court at Bombay, and in the 39th paragraph of his letter to the Government of Bombay, he says the parties are examinable in that court at each stage of the inquiry, and that therefore, in every case where conflicting testimony occurs, immense advantage is obtained by the power of sifting the parties themselves. I hence conclude that Sir Erskine Perry, when presiding in the small cause court, examines and sifts the parties. I have myself gone as far as I have seen other judges go in that court, that is to say, when a case has been nearly brought to a conclusion, and it has become almost certain whether the plaintiff or the defendant would succeed, I have asked the losing party if he had anything to say with respect to such and such matters, obstacles to his success. This I have done; not intending to rely upon what the party might say, but in order to obtain a clue to further evidence, if any, and because it often happens that the officer of the court has not been fully informed by the parties, or has failed to elicit all the particulars of the case. I have never seen any other judge go further in the court in question. Sir Erskine Perry's practice may be very salutary; but I am not aware of the law or custom by which it is authorized.

I incline to think that the vivâ voce examinations of parties to suits in law and equity would have a beneficial effect. If that procedure be expedient, and should be legalized, it would in itself work an important change, and greatly reduce the expense of litigation. It might be as well to try such an experiment before having recourse to the greater innovations recommended by the Law Commissioners. Against such a measure it may be strongly urged, that thereby the system of intermediate agency between the court and the suitor is violated; that system by which, to use the words of Sir Lawrence Peel, "in spite of natural inequalities, the powerful and the weak, the negligent and ignorant, the bold and the timid, are enabled to meet in equal terms on the arena of justice." It is said, that to place suitors on equal terms, you should take their examinations

tions as well as their pleadings, from their law agents, giving to the other side the power of excepting to insufficient answers or examinations, and relying on the penalties against perjury, and the characters of the practitioners, as protections against falsehood and fraud. The mental qualities of suitors are, indeed, as various as their physical strength. One party may be dull, ignorant or old; his memory may have failed; he may be agitated or nervous. If required to answer on the instant, to matters contained in a bill or answer, or to things relating to the subject of dispute in an action at law, he may make incorrect statements or admissions to his prejudice, because he makes them without due and just qualifications. Very different would be the situation of an able, bold or cunning person, self-possessed and fertile in resources and explanations. To a considerable extent, however, the like objections apply to vivâ voce examination of witnesses. It may be replied, indeed, that the statements or answers of a party may be looked upon as admissions, without due allowance being made for mental or physical infirmities, or without its being perceived that anxiety as to the result or other matters so agitated the examinant, as to incapacitate him from doing justice to his case. Are judges incompetent to the full perception and consideration of such matters, and the making just allowances accordingly, or are jurors supposed equal to these arduous duties, which are frequently entrusted to them, when trials of issues are directed by the Court of Chancery? However these queries should be answered, the feeling in England is adverse to the vivâ voce examination of parties; and although under decrees in equity the Master is directed to examine witnesses vivâ voce if he thinks fit, he is only allowed to examine the parties on interrogatories.

I do not greatly advocate the vivâ voce examination of parties, upon the ground that judges may derive assistance from observing the demeanor of the plaintiff and the defendant. Unless in peculiar instances, where deportment is strongly marked, and of a very decisive character, I think it unsafe to allow the demeanor, even of an ordinary witness, to have much influence on the mind. Judges, jurors, barristers unemployed in the pending suit, and bystanders, often differ widely in their respective estimates of the demeanor of a witness, and very fallacious opinions, I believe, are often formed by those who much rely on such criterions. In my opinion, indeed, the most formidable objection to the vivâ voce examination of parties is, that it would, to a great extent, violate the system of intermediate agency between the court and suitor, and place judges in a situation in which they would be particularly liable to contract sympathies, antipathies and prejudices, or to indulge, strengthen or give effect to such affections, if pre-existent or otherwise derived. In the second page of Mr. Gresley's book on Evidence, there is the following note: "Doubtless, a judge will occasionally betray a feeling or a bias of which advantage may be taken; suitors are said sometimes to have assumed the appearance of poverty, in order to find favour in the eyes of Lord Hale." Sir Herbert Compton told me, that the leaning of the court to pauper parties was matter of observation at Calcutta, and I have heard it strongly hinted at in the court at Bombay. But, as already suggested, if the vivâ voce examination of parties be inexpedient, might they not be examined on interrogatories? Might not each party, as well at law as in equity, be permitted to file or deliver interrogatories for the examination of the other? Pleading in equity might then be abbreviated. Bills of discovery, with reference to actions at law, might be abolished; and if defendants in equity were to be considered acting parties, and entitled to call upon the court to order fraudulent instruments to be cancelled, &c., cross bills might be also disallowed. A bill to enable plaintiffs and defendants to examine each other on interrogatories, was brought into the House of Lords by Lord Wynford several years ago, but was thrown out, being opposed by the present Lord Chancellor and Lord Eldon.

Shortly before Mr. Anderson acted as Governor of Bombay, he told me it was intended to establish at Calcutta a court similar to the small cause court at Bombay, and he asked what I thought of the latter. At that time I had no idea the discussion now pending could arise, and so far my reply, that it required great care to prevent the small cause court from becoming a nuisance, was perfectly impartial. That opinion was founded on experience as counsel, as well as upon the bench. I thought that, as in the court in question, judges were to a great extent uncontrolled and unassisted by counsel, the proceedings were sometimes over summary, the law delivered of inferior quality, and material points of law

law and fact undiscovered or unnoticed. Evils of the latter description I thought frequently arose from the officer of the court acting as agent for both parties, by one or other, or both of whom he often was distrusted, and was thus kept in the dark as to important features in the case. It is a common allegation of the officer, that he has been unable to get such a party or parties to attend upon him. Even when sufficient attendance of parties is attainable, the officer cannot be expected to feel the same zeal, or to exhibit the like energy or skill on behalf of either of the suitors, or for both, as would be evinced by a professional assistant for one party only. Moreover, as the officer acts as agent and legal adviser to both parties, and has personal intercourse with them in those capacities, he is very liable to contract a bias to one side or the other; and, I think, almost always does so. The judge, it seems to me, is very much in the power of the officer, who states the case on both sides to the court, and the party against whom the officer has a leaning, is pretty much in the predicament of having his case stated by his opponent's counsel. Owing to the above circumstances, it appears to me that the court for small causes, though a good court of the kind, and useful, holds out great encouragement to fraudulent litigation, and does injury to some extent to the welfare and morals of society. It may be said, that many of the evils alluded to are attributable to the intermediate agency of an officer, whereas in the court of the Law Commissioners, the judges are to perform those duties which devolve upon the officer in the court for small causes. I do not, however, impute any wilful misconduct to the officer of the latter court. I merely think he is influenced, as a judge or any other man would be if similarly circumstanced; that the judges of the projected court will be influenced in the same manner, and that as they are to have greater power, greater evils will ensue.

It appears from the draft of the Act prepared by the Law Commissioners, that in the intended court the plaintiff, or under certain circumstances his agent, is to appear before a judge or commissioner of the court, and orally, or in writing, lay the case before the commissioner, who thereupon, and, from what he may elicit by examination of the plaintiff or his agent, is to frame the declaration. If the commissioner discerns any cause of action, the defendant is to be summoned or arrested, as the case may require; and he, or under certain circumstances his agent, is to appear before the commissioner, who may examine him, and who, in the presence of both parties or their agents, is to proceed to take the pleadings, and settle the demurrers and issues of fact.

Whatever renders a judge active in conducting a cause, is bad in principle, and inconsistent with his functions; an axiom which, in every stage of procedure prescribed for the intended court, is wholly disregarded. Whilst unusually extensive powers are given to the judge, the system of intermediate agency between him and the suitor is voilated throughout, and accordingly prejudice and passion will have ample room, as well as ample grounds, to operate.

In the first instance, the commissioner is to discharge those duties which an able, upright attorney performs towards a client preferring a claim against another person. He is to hear or receive the statement of the claimant; elicit, by queries or otherwise, further information if expedient, for which latter purpose he is to be armed with power to punish prevarication or falsehood, and he is then to determine, in his own mind, whether there be any valid cause of action. I think all this would be better done by an attorney, to whom, as being his own agent, and of his own selection, and not a judge, the party might be more candid and unreserved. I have the less doubt the attorney would be more effective than the commissioner, because the latter is also to act as agent and legal adviser to the defendant; and the plaintiff will be most reluctant, I believe, to confide the whole matter to the commissioner, and will endeavour to conceal weak points, and whatever may, in his opinion, have an injurious effect upon his case, all which an attorney might be able to discover. The like observations may be also made respecting the commissioner's agency for the defendant: should either party appear to shuffle, with a view to better his case, the commissioner, whether he impose a penalty or not, may contract a bias against him; but I think his leaning will usually be against the defendant, for his more active agency will, in general, be exercised for the plaintiff, with whom, to some extent, he may identify himself accordingly. Besides, much delay and many adjournments will often occur before the case of each party can be fully understood, in

in order to being duly expressed in the pleadings; and the commissioner will want zeal and inducement to exert such energy, skill and patience, with respect to either of, or both the litigants, as would be exercised by a responsible counsel or attorney acting for one party only; and in the absence of professional control and assistance, the commissioner's conduct may be arbitrary; he may fail in discovering material facts and points, for parties themselves may be blind to facts as well as points of law, if they do not perceive how they affect the case, and the law delivered may be frequently inferior in quality.

Not only are judges and the parties themselves blind to important matters of law and fact, which, with professional aid, would be discovered; but it often happens that where a judge perceives a point, he at first considers it untenable, and if alone would unhesitatingly overrule it, and yet the same point is afterwards put by counsel in a different light, and becomes the principal feature in the case. It may be said, parties are to be at liberty to employ attornies and counsel in the intended court, but, for reasons already given, I think they will seldom have such assistance, especially as they can only have it under restrictions, and the draft of the Act obviously imports, that the commissioners are, in general, to discharge those duties which are now usually performed by attornies or counsel. In general, therefore, it is to rest with a commissioner, professional or unprofessional, unchecked and unaided by counsel, to determine whether the plaintiff has stated a good cause of action; in other words, whether the action is to be instituted or not; and also, whether any and what points of law, or issues of fact, are to be raised; these last-mentioned matters must be left to his discretion, unless it shall be incumbent on him to take every demurrer, and raise every issue suggested by the parties; in the latter case, endless prolixity and nonsense must ensue; and if he is to exercise discretionary power in such particulars, he will be often subjected to reproaches and upbraidings, not always unjust, from the unsuccessful party.

Although Sir Erskine Perry discards written pleadings altogether, the Law Commissioners adopt them. As already mentioned, my own conviction is, that pleadings at law in the Supreme Court are already more concise than pleadings will be under the system of the Law Commissioners, and I have no doubt that pleadings in equity might be reform edso as to secure a like result. The commissioners of the intended court, whether professional or unprofessional, would find it difficult to frame declarations or pleadings more brief, and yet sufficient, than those most commonly in use on the plea side of the Supreme Courts; in the more unusual pleadings there is much room for improvement. Abbreviation is difficult and laborious, and considering how irresponsible the commissioners of the proposed court will be, as compared with barristers and attornies, I think that after a little time their pleading will be inadequate and prolix. In brevity of pleading, I therefore believe nothing will be gained under the proposed system, and but little, if anything, in the cheapness of drawing pleading. Most, or very many of the pleadings now used at law, are drawn by attornies, and for them a comparatively small rate of remuneration is charged; but whether pleadings be drawn by attornies, barristers or judicial commissioners, they must be paid for in one way or another. Under the new system, judicial commissioners are to perform the part of attornies, counsel or officers of court, and thus a much greater number of judges will be required, and if such judges are to be remunerated upon any thing like the same scale as civil functionaries in the service of the India Company, they must be highly paid; and yet the greater portion of their duties will be such as are now performed by barristers and attornies. A great portion of their pay may thus be considered as costs for their services in acting as attornies or counsel, and in drawing pleadings; and upon striking a balance between such costs of drawing pleadings under the projected system, and costs as they might be reduced under the existing system, I am confident there would be little, if any, difference in favour of the former. Such costs of drawing pleadings by judicial commissioners would probably be extracted in some way from the suitors, but if not, they must fall wholly upon the Government; and if Government were to pay salaries to officers of the Supreme Court, instead of leaving them to be supported by fees, pleadings might be delivered between the parties, and the expense of pleadings would then be little, if any thing, beyond that incurred in drawing them.

Sir Erskine Perry believes he has fully met and refuted Sir Lawrence Peel's objections. It appears to me he has done neither. I shall not, however, go at any length into the argument, but limit myself to observing that Sir Erskine Perry assumes, that those objections are resolvable into two propositions:—"First, the proposed plan will introduce misdecision, and consequently uncertainty, into the law. Second, the plan gives the judge too much power." As to misdecision, he says, "This class of objections proceeds upon two assumptions, first, that the proposed procedure will not bring the facts in each case to the notice of the court; second, that upon the facts so brought, the judge will decide on arbitrary notions of justice and equity, and not on the substantive law of the land." This last position he terms an assumption altogether untenable and gratuitous, because "No change is proposed to be made in the substantive law of the land, but only in the mode in which the controversies of suitors are to be brought forward, in order to have that law applied to them." What he calls "the first assumption," viz. "that natural procedure will not bring out the facts," and which he imputes to Sir Lawrence Peel, he says, "is therefore all that needs to be noticed." After asking, "What arguments have been brought forward by Sir L. Peel to warrant this assumption?" he says, "To me it appears that the great advantages of the scheme consists in its aptitude to admit of all facts in issue between the parties being readily brought before the court, and that it is directly calculated to obviate those evils in the existing system, by which essential facts are often shut out, and by which so many decisions pass irrespective of the merits of the case." He then alludes to cases at the assizes in England, in which, through mistakes of pleaders and negligence of attornies, the parties have been turned round on the pleadings, or put out of court by a failure to prove a notice or signature, and concludes by saying, the volumes of reports "are equally full of decisions where the interests of suitors have been concluded for ever on some blunder or other of their legal advisers, and wholly irrespective of merits."

There are few professional men but will deny that this last assertion, as to interests of suitors being concluded for ever on some blunder of their legal adviser, irrespective of merits, is warranted by any thing that occurs in England at the present day, and I am not aware that there has been any instance of the kind at Bombay. As to parties being "turned round on the pleading," I certainly think the court at Bombay has not shown ready liberality in these matters, although on some occasions, to prevent the results in question, effective measures have been adopted, and adjournments granted from day to day, and even from term to term. I cannot at this moment recollect any case in which a party has been so "turned round" of late years at Bombay, and if judges have not already the power I think they possess, of remitting rules and adopting measures to meet the exigencies alluded to, such power might easily be conferred, and its exercise rendered incumbent on the courts. The mischiefs mentioned by Sir Erskine Perry could not indeed occur under the system he proposes, for thereby, as already shown, written pleading is to be altogether excluded; the parties are to tell their stories orally, and are not even to make use of petitions, which "any one can draw," lest the story should be told, not by the party himself, but by his legal adviser, and as there is no provision for reducing the oral pleading into written pleadings, conformable to the plan of the Law Commissioners, parties cannot be turned round on the pleadings.

But the first assumption ascribed to Sir Lawrence Peel is, "That the proposed procedure will not bring the facts in each case to the notice of the court," and one of the objections resolved into this last proposition is, that "the plan requires a judge of higher qualities than can be found, and even the highest qualifications would not be sufficient to ensure success, because the judge would have too much power." It appears to me that to fulfil the duties of attorney and counsel to each of two adverse litigants, a man requires very high qualities indeed, qualities rarely, if ever, to be found; that some of the difficulties of acting in this double capacity are but little diminished, whilst others equally formidable arise, where the same person also undertakes the office of judge between the parties, and that he who presumes to exercise such various and inconsistent functions, will probably fail in his duty as a judge, especially, as in such capacity he will have very great discretionary power, power which, from the infirmity of human nature, and the want of adequate control, must occasionally or often be abused. It, therefore, seems to me, that, owing to the difficulty of the various duties assigned to the judicial commissioner in the intended court, and the occasional or frequent abuse of

of the discretionary powers entrusted to him, the proposed procedure, although it may often bring the facts in a case to the notice of the judge, inasmuch as the party, when not himself blind to them, may disclose them, yet, that such facts may be distorted, disregarded or made light of, as ignorance, prejudice or passion, may suggest; and that, under the like influence, the law applied may oftentimes not be the substantive law of the land, but such law strained, shortened or misinterpreted, as occasion may require.

But in the 23d paragraph of his letter, Sir Erskine Perry mentions what he considers preventive checks upon undue exercise of power by Indian judges, to wit, "The judges of the Supreme Courts have very little of the moral support which judges in England derive from the influential classes of society." Therein, it appears to me, lies the greatest danger. Moral support would sustain them when right, and abandon them when wrong. Upheld thereby, they would disregard the cabals or opposition of those whose fraud, violence or injustice were corrected or impugned in the administration of the law, and the apprehension of losing such support would greatly tend to keep them within due bounds. Unaided and uncontrolled by this moral influence, they may truckle, temporize or shrink from uncompromising performance of their duties, or they may overstrain their power for their own gratification, or that of others.

Sir Erskine Perry further intimates, that the local Governments and governing classes feel that the Supreme Courts have hitherto, in some slight degree, controlled them. The existence of any independent court in the country would produce the like effect. As he observes, however, the restraint, although lightly and temperately administered, can scarcely prove otherwise than galling, and I believe it has long been their object to remove it, and various proceedings of the Law Commission are obviously tending, in various ways, to its removal, and to the establishment of courts of a very different character. Under such circumstances the local Governments and governing classes may be, as Sir Erskine Perry leaves us to infer, very anxious to detect judicial errors, but the same feelings which occasion this anxiety, indispose them to afford that moral support already mentioned, and which, by being attendant on a judge when right, and forsaking him when wrong, is the chief security for due administration of justice. In fact, the local Governments keep carefully aloof, unless when cases are brought forward in which they are intimately concerned, and that is but seldom, for there is scarcely an instance of a prosecution for an offence by a civil servant being instituted in the Supreme Courts, such matters being almost uniformly disposed of by secret committees, and as to civil cases, there is generally such a leaning on the bench towards the ruling power, as deters many a suitor from going to law. A man must have a strong case to succeed where he is opposed to the local Government, and when at the bar, I have several times advised against the institution of suits against the East India Company, or where the Government of Bombay upheld the opposite party, not because I thought the client had not a fair demand, but because I was convinced the court would lean against him so strongly, that even if he obtained a verdict, he would probably be saddled with his own costs, or that very inadequate damages might be awarded. Still the Supreme Courts are some check upon power which would otherwise be more without control. Notice must be taken by the Government of glaring offences of civil servants, and redress for civil injuries must often be accorded, because the Supreme Court is open to aggrieved parties, if they choose to proceed in it, and if driven to seek redress in that way, publicity and inquiry are at least attainable; for where attornies and counsel practise they cannot well be evaded, and in courts such as the Supreme Courts, there are, even in this country, some strong restraints upon the judges.

Another supposed preventive check is mentioned in the following terms: "The public press represents the interests of the executive classes almost exclusively, and therefore has additional motives to the tendency of a public press generally, to keep a rigid look-out for judicial peccadilloes." The newspaper trade has a demoralizing effect on those engaged in it. In India especially the European societies, being very limited individuals, frequently come into collision, petty party feelings and personal liking and dislikings are engendered, and when newspaper editors assail or applaud a man professedly on public grounds, it often happens they have been instigated by some dishonest, paltry motive. Hence, although their misstatements of facts are mischievous and annoying, their opinions are usually considered worthless. Each Indian newspaper primarily

represents

represents the selfish interests, opinions, party feelings, piques and prejudices of particular individuals or cliques who are proprietors, or of its editor, and in a small society these concerns are so paramount and absorbing, that public spirit has but little opportunity to operate. If it be made worth while to the proprietors or the editor, directly or indirectly, as it often is, the newspaper will advocate the views of the executive classes, and not otherwise. But the argument may be put into a small compass. Sir Erskine Perry does not ascribe the representation of the interests of executive classes by Indian newspapers to high or public feeling. It has rarely sprung from so pure a source. Hence, however the public press may look out for judicial peccadilloes, its censure or its praise must fail of having full effect, and the preventive check in question must to some extent be feeble and ineffectual.

Lastly, Sir Erskine Perry thinks the bar in this country "more prone to concur in any carpings and cavils at judicial authority, than to support it even in its due exercise by their moral influence." That the bar in India are not so useful in the latter respect as the English bar, I cannot deny, and no doubt, unworthy characters are to be found at the bar as well as in other walks of life, but they are soon detected, and become insignificant. Still I fear the animadversions of the bar upon the exercise of judicial authority in this country are frequently correct, and I have no doubt they are more felt by the judge, and have greater effect upon him than observations from any other quarter, and are more effectual than any other check. There are always some men in the profession whose respectability, knowledge of law and honourable feelings are unquestionable; whose opinions cannot be disregarded, and who will abide by a judge in good report or evil report so long as they think he has fairly done his duty, and who will only impugn his conduct when they honestly think him in the wrong. I therefore think the bar form indeed a preventive check, but not because of their proneness to concur in carpings and cavils, a quality which must tend to lessen their moral influence and ability to control.

Each of these supposed restraining powers, except the last, is represented as arising from the peculiar situation of judges of the Supreme Courts. They are therefore inapplicable to the court proposed by the Law Commissioners, the judges of which, it may be inferred from the draft of the Act accompanying the Report, are to be appointed by the Governor of Bengal, and are to be paid, each such a salary, respect being had to his qualifications, as to the Governor-general in Council shall seem meet. It requires no great discrimination to perceive that such judges will be circumstanced very differently from judges of the Supreme Courts; that they will have a strict connexion with the local Governments of the country from which their appointments will have been obtained, and upon which the amount of each respective salary is to depend; that they will seldom or never be placed in any thing like conflict with the governing classes of the community, by which and by the press, so far as it may represent the interests of those classes, such judges will accordingly be upheld. Neither can these supposed restraining powers apply to the court proposed by Sir Erskine Perry. Should the tender of his services be accepted, and should he be appointed chief commissioner of such a court, either at Calcutta or Bombay, he will have been appointed by the local Government; in whatever light he may view himself, he will not be viewed by others as a judge of the Supreme Court, and he may not experience any want of that species of moral support, the want of which he has relied on as restraining the abuse of judicial power.

Judges in the colonies, I understand, are to some extent dependent on the local rulers, and I have been assured that defects in the administration of justice consequently arise, although in each colony there is usually a large European population, not forming a part of the executive class, but mixing therewith, influencing and controlling it, and although English colonists, if seriously injured, may become so clamorous as to make themselves heard in Downing-street or at Westminster, and therefore local rulers may study to appease them. In this country, however, there are but a few Europeans not included in, or employed under the executive class, the influence and power of which class is therefore paramount The natives have no intercourse on equal terms with the executive European class or with Europeans in general, and the difficulties they encounter in seeking relief in England are notorious. Hence, one ground of the expediency of having in this country courts independent of and unconnected with the local authorities, and which, after all, has been but imperfectly effected.

No. 1.
On Civil Judicature in the Presidency Towns.

Sir Benjamin Malkin, it appears, carried out at Sincapore and approved of a system somewhat similar to that proposed by the Law Commission. His judicial qualities are highly spoken of, and under him the system may have worked better than could be expected under a judge of less estimable qualities and inferior attainments. Still I should receive with great caution the opinion of a judge as to the operation and effects of a favourite system. I should prefer the evidence of the suitors and practitioners, if any, who may have had experience of the court during the period he presided in it. A judge may imagine he has done a great deal of good in cases in which the profession or the public think he has shown himself a decided partisan.

Warnings of danger from the abuse of judicial power have been represented as uncalled for, and Mr. Bentham is charged with having gone ludicrously far in the surveillance he proposed to exercise over judges; but lawyers of experience, including Mr. Fearne, have concurred in the following sentiments of Lord Camden: "The discretion of a judge is the law of tyrants; it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper and passion. In the best it is oftentimes caprice; in the worst it is every vice, folly and passion to which human nature is liable."

It is intended that the new court shall administer equity as well as law. It is to have cognizance of matters within the jurisdiction of courts of common law, but it is to apply the rules of English equity whenever those rules would be held applicable if such matters came under consideration in a court of equity. In short, when equity would affect any matter brought forward in the proposed court, equity jurisprudence is to be administered forthwith.

Many cases of fraud, accident and even trust, as cases of bailment, and that large class of cases in which the action for money had and received is maintainable, have long been cognizable at law, though formerly considered proper objects for a court of equity. The judges at Calcutta, as I understand them, are of opinion that the jurisdiction of courts of law might be extended to all cases of accident, mistake, dower and partition, account when not involving the execution of a trust, administration of assets, and, to a considerable extent, to demands for specific performance. It seems to me that, whether a case coming under any of these heads of jurisdiction could be properly taken cognizance of by courts constituted differently from courts of equity, would depend upon its particular circumstances. If the object of the suit were single, or not very complicated, and there was but one class of plaintiffs and but one class of defendants, all persons in each class having a unity of interest in the subject, it might be disposed of by a court constructed like a court of law, but in such a tribunal it would be difficult to dispose of a suit to which there were numerous parties, all standing in different relations to the matter, such matter being manifold and complex.

The practice recommended by the Law Commissioners is represented as all-sufficient, and equally adapted to all cases, whether of legal or equitable cognizance. If it be indeed so, there could be but little gained by transferring matters of equity to law in the court they propose to erect, and it might be better to preserve the present distinction between legal and equitable jurisdiction, and to appropriate to each a particular side of the intended court, for such a measure might prevent them from being mixed up, as Mr. Justice Story says, "in a manner not easily comprehensible elsewhere." So also, in the Supreme Courts, if pleadings and proceedings in equity were rendered sufficient without being redundant, there would be but little, if any, advantage in the transfers from equity to law which the judges of Calcutta advocate. I concur in their views, subject to the qualifications mentioned in the last paragraph, and if the existing procedure in equity is to remain unaltered, I have no doubt that much good would often result from the measures they propose, but such good would arise because a man could sue at law cheaper than in equity. Whether a matter of equity be brought forward in a court of law or in a court of equity, it should be introduced by appropriate pleadings. A simple matter of equity might be brought before a court constituted as a court of law, by means of pleadings perhaps equally brief with those usually resorted to in such a court; why should it not be brought forward in like manner in a court of equity? Putting summary procedure out of the question, if a complex matter of equity could be disposed of in a court constituted as a court of law, it could only be by means of pleadings of much greater length, and more complicated and numerous proceedings, than would

would be necessary for such subjects as are usually committed to courts of law; but why, in a court of either description, should the length of procedure be disproportionate to the subject; and does not the difference in this respect between a court of law and a court of equity chiefly arise from those peculiarities in the latter, for which, in a former part of these observations, I have suggested remedies? Would not the adoption of vivâ voce examination of witnesses in equity, in itself work a great and salutary change? Might not summary procedure, as exercised in bankruptcy, and such measures as the judges of Calcutta suggest in the last paragraph of Sir Lawrence Peel's minute, be introduced with good effect; and if all or many of these alterations were accomplished, wherein would the procedure at law have advantage over that in equity, and in such a state of things, what benefit would result from transferring to law particular branches of equity jurisdiction, except so far as courts of law might thus be enabled to dispose of a simple matter of equity incidentally or unexpectedly arising in the course of an action at law. Courts of law already exercise power for such purposes to a considerable extent, to wit, in cases of accident, mistake and fraud, and in such circumstances as occurred in Legh *v.* Legh, and the cases mentioned in note (*w*), 1 Bos. & P. 448.

The Law Commissioners seem to aim at an unlimited extension of the last-mentioned power; judging from their arguments on such subjects, they claim for their court, authority to dispose of any matter of equity, however complicated in character, or whatever number of persons may be interested therein, which can arise respecting the subject of an action at law. Judging from those arguments, they apparently contend that such matter of equity should be summarily disposed of in a court of law, upon the same pleadings alone as the action of law required, irrespective of the equitable matter, and with the parties to the action at law alone before the court.

The Law Commissioners adopt the imperfect report of Rattle *v.* Popham, 2 Strange, 992, and state that case as follows: "It appeared that upon a marriage settlement a power was given to every tenant for life, when in possession, to limit the premises to any woman he should marry, for her life, by way of jointure and in lieu of dower. The tenant for life made a lease for 99 years, determinable on the death of his wife. Lord Hardwicke, in a court of law, held the lease not to be warranted by the power." They add, apparently on the authority of the report of Zouch *and* Woolston, by Burrow, the following words therein attributed to Lord Mansfield: "The widow brought her bill in the Court of Chancery, and Lord Talbot, arguing from the same premises, the power and the lease, without any other circumstance, held the lease to be warranted by the power." According to the same report, Lord Mansfield stated, that Lord Talbot had declared "it was not a defective, but a blundering execution of the power, and had decreed the defendant to pay all the costs both at law and in equity."

The report in Strange is erroneous, because it is therein stated, that the power was to limit by way of jointure and in bar of dower; whereas it appears from the report of the case in Chancery, as given in Sir Edward Sugden's work, upon the authority of the registrar's book, that the power was not to give an estate in bar of dower, but the power was "for Walter, when he should have any estate in possession in the premises for his life, by any deed, to assign, limit or appoint to or for the use of or in trust for any woman or women that should be his wife for her life, in lieu of jointure, all or any part of the premises, to take effect from his decease;" thus he was left at large to make a provision for his wife, and it was not essential that such provision should be in bar of dower. Had it been so, the execution of the power would have been erroneous, for the additional reason that the estate given by Walter Savage, was no bar of dower. The statement of the case in equity, as attributed to Lord Mansfield in the report in Burrow, is perhaps erroneous in several respects, but is certainly wrong in this, that it is therein said Lord Talbot "decreed the defendant" (Savage, the remainder-man) "to pay all the costs both at law and in equity." In Sir Edward Sugden's work, the decree, upon the authority of the registrar's book, is stated in the following words: "It was decreed that the plaintiff should be quieted in the estate comprised in the jointure-deed during so much of the 99 years as she should live, and the defendant was to pay unto the plaintiffs their costs of the suit; and the injunction formerly granted in this cause for stay of the defendant's proceedings at law against the plaintiffs was to be continued."

Thus it appears the defendant was not decreed to pay the costs at law as well

as in equity, and when we detect so material an error, it is not unreasonable to suppose that in other respects also, with regard to this case, either Lord Mansfield may have been wrong in making the statements ascribed to him by the reporter, or the latter may have been wrong in imputing them to Lord Mansfield. The latter supposition seems to have been embraced by Lord Redesdale; *see* Shannon *and* Broadstreet, 1 Sch. & Lef. 70, 71. The account of the case in Ambler, 342, so far as it goes, corroborates that given in Sir Edward Sugden's Appendix. The statement regarding Burlton *et* Ux. *v.* Humphries and others, in Cave, imputed to Lord Mansfield in 4 Burrow, 2056, is another instance in which either Lord Mansfield mis-stated the case, or the mis-statement was wrongfully ascribed to him by the same reporter. Ambler, 256, and Clarke *v.* Parker, 19 Vesey, 20, 21.

With respect to Rattle *and* Popham, Lord Mansfield is represented to have said that "Lord Talbot, arguing from the same premises, the power and the lease, without any other circumstances, held the lease to be warranted by the power." I shall endeavour to show that Lord Talbot did not maintain any such doctrine. Lord Mansfield is represented to have asserted that Lord Talbot said "it was not a defective but a blundering execution of the power." No such expression is imputed to Lord Talbot in the report contained in the Appendix to Sir Edward Sugden's book, although some at least of the dicta of Lord Talbot in the case are therein professedly given; nor is any such expression attributed to Lord Talbot by the Master of the Rolls, in Alexander *v.* Alexander, or by either of the Lords Commissioners Willes and Wilmot, in Churchman *v.* Harvey, or by any other authority in any instance in which Rattle *and* Popham or Newport *and* Savage has been mentioned. In fact, Newport *and* Savage is always classed amongst those cases in which relief has been given against the defective execution of powers, and it is clearly an instance of defective execution within Lord Redesdale's definition in 1 Sch. & Lef. 63.

But whether Lord Mansfield was wrong or not in making such statements and using such expressions, regarding the case of Rattle *and* Popham, is unimportant, except so far as error in those particulars may detract from that weight which so high an authority might otherwise possess. His conclusion respecting this point of equitable jurisdiction was, no doubt, conformable to his opinions on similar subjects. It may be assumed that he held, that as the Statute of Uses makes good at law whatever is a good power or execution in equity, it followed that whatever was an equitable ought to be deemed a legal execution of a power.

Unquestionably the same construction of a power should prevail at law as in equity; and so it does. A power to limit an estate of freehold is construed at law as not authorizing a grant of a different species of estate, as a term for years; and the same construction prevails in equity, which, however, goes further, and although holding the grant for years not warranted by the power, yet, if there be no fraud, and the grant was made for meritorious consideration, will make a decree which, without declaring the estate for years to have been duly made, will yet relieve the grantee, by securing to him the enjoyment of it consistently with the intention of the grantor and of the person who created the power. The distinction was apparent to the Law Commissioners, but they have not embraced it. They say, "Lord Redesdale admits that whatever is a good power or execution in equity, the Statute of Uses makes good at law; but he implicitly denies that such an execution of a power as the lease in the case of Rattle *and* Popham, is good in equity. According to him, it is only such an execution as a court of equity, by its peculiar mode of acting will make good." They then proceed insisting upon the opinions of Lord Mansfield and Mr. Justice Wilmot, as given in Burrow, as authorities, and conclude, "that the only reason why a court of equity acts in such cases in the peculiar mode alluded to, is for the purpose of making such an execution of a power good at law." Now in this the Law Commissioners are quite wrong; for, to take the case they have themselves selected, although if the execution of the power in Rattle *and* Popham could have been or had been held good at law, there would have been no necessity for the court of equity to act, yet the decree respecting Rattle *and* Popham did not make the execution of the power in that case good in law, or declare it to be good in any respect. The decree left the execution bad at law, and merely provided in consideration of the circumstances, that the remainder-

man

man should not avail himself of the defect. No conveyances were directed, and the matter remained at law, as before the decree in equity, except that the remainder-man was enjoined from proceeding at law by ejectment or from disturbing the possession of the widow. It seems the bill was in the nature of a bill for quiet possession; Cockshot *and* Parke, Tothill's Rep. 177, Hughes *v.* Morden College, 1 Ves. sen. 187, Prac. Reg. 254, &c. Equity acts in such a case, not by making or declaring that which is bad to be good, but by exempting the case, in consideration of its peculiar circumstances, from the general operation of the law.

In Wykham *v.* Wykham, 18 Ves. 415 & 423, Lord Eldon puts the matter somewhat more explicitly than Lord Redesdale, in the following words: "I am not surprised that any one attempting to execute this power should have considerable difficulty how to do it. He could not get far wrong in equity; as being for a meritorious consideration, it would do in equity in almost any form in which that intention was clearly expressed. I say it would do in equity, as although the phrase is frequently met with in the common law reports, that what is not a good execution of a power at law, cannot be a good execution in equity; if by that is meant, that what cannot be sustained as a good execution of a power at law cannot be sustained in equity, I do not agree with that interpretation. Though not a good execution of a power anywhere, it may be that which a court of equity will take care to have executed. I therefore agree with Lord Redesdale, with the same difference expressed in his observations upon Lord Mansfield's language in Burrow's Reports; not admitting as doctrine to be maintained, that what a court of equity will substantially support as a good execution of a power in equity, is therefore a good execution at law; notwithstanding it is confidently there stated, that there can be no difference in the execution of a power at law and in equity. If it is to be understood a strict literal execution, viz. that it was duly executed, that must be the same both in courts of law and equity; but that a court of equity will enforce the substantial intention of the person executing, where a court of law cannot deal with it, is I apprehend extremely clear." *See* also Butcher *v.* Butcher, Gooday *v.* Butcher, 1 V. & B. 93 & 98, and 9 Ves. 393. So also in Clarke *v.* Parker, 19 Ves. 21, 22, Lord Eldon observes: "Lord Mansfield, in Long *v.* Dennis, says further, 'I mention these cases to 'show that the court ought not to make strides in favour of a forfeiture;'" and then Lord Eldon proceeds thus: "The strides, if any, were the other way. What follows resembles his observations on the execution of powers. I agree in the next passage, that there can be but one true legal construction of a condition; but if the proposition is, that a court of law can hold a condition to be performed in all circumstances in which a court of equity says, though it is not performed, relief shall be given against the non-performance, that is utterly unfounded."

The phrase "a good execution of a power in equity," is a loose expression, signifying not that the execution is good anywhere, to use the words of Lord Eldon, but that a court of equity, accounting the execution bad, but considering that the act done evinced the intent of the party who had the power to execute the same, and finding there was meritorious consideration on behalf of the appointee, will secure to the latter such benefit as can be granted consistently with the respective intentions of him who created, and of him who meant to execute the power. That such is the true construction of the phrase, and that with a view to give relief, equity holds the execution bad, and looks upon the defective act not as good, but merely as evidence of intention, several considerations tend to establish. If equity held the execution literally good, it should relieve even a volunteer, whereas it only grants relief where there is meritorious consideration. If equity in such instances held the execution literally good, it would be in effect to maintain the absurdity, that to limit an estate for years was consistent with a power to limit for life; that to limit for 40 years consisted with a power to limit for 10 years. Equity would relieve the meritorious party intended to be benefited by such an excessive execution as last alluded to. It would secure to him the use for 10 years, and no longer. It would do so, holding the execution bad as at law, although the loose expression "the execution is good for so much," might be employed.

If verbal inaccuracies are made ground for the position that what is held bad at law is held good in equity, an accurate expression commonly used in equity might be quoted to disprove the fallacy. An execution bad at law is frequently called

called in equity a defective execution, which expression imports that equity considers it defective.

Whether the Law Commissioners be right or wrong in asserting that Lord Mansfield never meant to say that Lord Talbot found fault with the decision at law in Rattle *v.* Popham, it is quite clear that, according to the report in Burrow, Lord Mansfield himself did find fault with that decision, and upon the ground that Lord Talbot, " arguing from the same premises, the power and the lease, held the lease to be warranted by the power, and said it was not a defective, but a blundering execution; words importing that the execution was good at law, a blundering execution, but not a bad one. Sir Edward Sugden, however, shows (1 Vol. 516) that Lord Talbot clearly held the execution bad at law, inasmuch as, sitting in a court of equity, he held, as appears from the report of Newport *and* Savage, that it was not a mere blundering, but a defective execution. Lord Mansfield's argument is, the decision at law was eroneous, or the execution, which at law was held defective, would not have been declared in equity on the same premises, not to be defective. Sir Edward Sugden's position is, that in equity the execution was declared to be defective, and that therefore the argument of Lord Mansfield fails. If the execution was held defective as well in equity as at law, the construction of the power at law and in equity was the same; in each forum the execution was considered bad.

Lord Redesdale, in Shannon *and* Broadstreet, and Lord Ellenborough, in Burne *and* Prideaux, deny Lord Mansfield's imputations on Rattle *and* Popham to be well founded. Those imputations, so far as appears, went on the idea that the execution had been held in equity, not to be defective. Lord Redesdale obviously considers that it was held defective in equity, in the same sense as at law, and perhaps Lord Ellenborough may have entertained the same opinion, for he arrived at the same conclusion, namely, that Lord Mansfield's imputation on the decision at law in Rattle *v.* Popham was ill founded, and that imputation, as already shown, was maintained upon the position that the execution had been held good in equity.

In maintaining his views as to legal and equitable jurisdiction, Lord Mansfield had advantages in the case of Rattle *v.* Popham, for the decision therein at law was questioned upon other grounds than those assigned in 2 Burrow, 1147. That decision went upon the resolution in Whitlock's case, and that resolution, it has been argued, was a mere *obiter dictum* (see Burne *v.* Prideaux), and has been said to have been held too nice. Also, the power extended only to a single life, and there was no injury to the remainder-man by reversionary or concurrent leases. But at present there is no doubt that in Rattle *and* Popham the execution was bad, for the power was to limit a freehold, whereas only a chattel was appointed, and the differences between the estates in quality, in the qualifications they respectively confer, and with respect to executions, forfeitures, barring dower and the right of the remainder-man to suffer a remedy, are irreconcileable.

If the notions of the Law Commissioners were carried out, a man in an action of ejectment might acquire or retain possession of land in which he had agreed, but not in writing, to purchase from the owner of the fee, a term of 100 or 200 years, paying a small rent for the same, the parol agreement being followed by such circumstances as in a court of equity would entitle the vendee to a specific performance, but which circumstances wholly depended on parol evidence. There would be no record either of the parol agreement, or of the subsequent circumstances in the proceedings at law; indeed the purchaser's rights might be admitted without action; and in either case, whether his claims were litigated or not, at the end of the term the respective rights of the parties then entitled, if not utterly forgotten, would merely rest upon tradition.

Moreover, the Law Commissioners follow Lord Mansfield in maintaining that in actions of ejectment, such as Rattle *v.* Popham, a court of law should recognise title in an appointee under a power defectively executed, if there be circumstances in the case that would entitle the appointee to relief in equity. One of the results of establishing this doctrine would be, that a party entitled to an estate for a term of 30 years, might recover possession on an instrument purporting to appoint an estate for a much longer period, or a party entitled to one species of estate would recover upon an appointment of an estate of a different description. It would not appear upon the proceedings in an action of ejectment, how much the lessor of the plaintiff was entitled to, a point upon which the decree of a court of equity would be explicit. If a party who had thus recovered in

ejectment

ejectment continued in possession for some years, the remainder-man might have difficulty in enforcing his rights, and, at all events, the title deeds, muniments and assurances of property would be inconsistent with the actual rights of the parties. Where a court of equity relieves an appointee under a defectively executed power, without decreeing conveyances conformable to the equitable rights of the parties, the existing appointment is inoperative at law, and under it no possession can be recovered which by lapse of time or otherwise might confuse, obscure or alter just rights; and the decree in equity explains and rectifies the whole matter. Nor can the Law Commissioners say that the court of law should declare the rights of the parties, or decree conveyances. They follow the opinions and arguments of Lord Mansfield regarding actions of ejectment, in which no such proceedings are admitted. Indeed, they contend (Report, page 18) that a court of equity directs a conveyance merely for the purpose of conferring a good title at law. It would follow, that a conveyance must be wholly useless where a good title is already recognized at law. Equity decrees conveyances, in order that they may answer the ends of conveyances,—in order that they may establish, secure and evidence good titles, both in law and equity. It is generally expedient that such conveyances should exist for the security of property, and to prevent litigation, and with the like views, if existing conveyances be inconsistent with the rights of the parties, the execution of perfect conveyances is frequently expedient, and where proper cases for such interference are made out, equity may decree accordingly. But it is not imperative on a court of equity, where an equitable title is bad at law, to have it made good at law by a conveyance. Equity may leave the title bad at law, as in Newport *v.* Savage, and, without decreeing any conveyance, may secure to the parties, by equitable process, the enjoyment of their several rights.

These are but a few of the evils which may arise, where, to use the expression of the American judge, Mr. Patterson, "there is no distinct forum to exercise chancery jurisdiction, and the common law courts equitise as far as possible." A court of law, in order to dispose of matters of equity connected with an action at law, would have to go into all the circumstances of the case, for, upon such circumstances, and not merely upon a particular instrument or deed, the equity would depend. To determine even whether there was meritorious consideration, it might be requisite to go into many circumstances not apparent on the deeds before the court, and not duly brought before the court either by the plaintiff or the defendant; and if the rights of the parties depended upon matters of equity rather than or as well as matters of law, many more parties might be interested in the matters of equity than were before the court with respect to the matters of law. It might also happen, that the matters of equity were by no means, or but insufficiently, raised or brought forward by the pleadings, and might therefore take one or both the parties by surprise, and the determination of matters of equity without proper pleadings and records, would cause confusion and obscurity in the administration of justice. To such difficulties, Mr. Justice Kelly alluded in Lessee of Massey *v.* Touchstone, an action of ejectment, in which the pleadings were general, not an action for breach of contract, in which the pleadings explicitly put forth the circumstances of performance and non-performance. He then drew the general conclusion, that a judge in a court of law should leave equity to its proper tribunal, and not foreseeing any attack from the Law Commissioners, he inadvertently referred to the case then before him as illustrating the evils he referred to. The case was comparatively simple, and did not fully exemplify the evils in question. Thereupon the Law Commissioners fall foul of him, and, as Lord Redesdale says, "looking at particular cases rather than at the general principles of administering justice, observing small inconveniences, and overlooking great ones, allege, *inter alia*, that Mr. Justice Kelly seems to have entirely forgotten that the agreement in the case referred to, and all the circumstances of performance and non-performance, are beyond all question the proper constitutional subjects of common law jurisdiction," and conclude several pages of matter in the same strain, by stating, "that where there is a legal agreement, and no formal objection which would preclude the party at law, a court of equity will not decree specific performance unless it is satisfied that the party is, under the circumstances, entitled to damages at law. That is, the courts of equity hold, that in such cases the question whether there is a clear equity, depends upon the question whether there is a clear title to damages at law."

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As a portion of the premises to this conclusion, the Law Commissioners have adopted the doctrine, that because "before Lord Somers' time courts of equity would not even entertain a suit for specific performance of an agreement, until the plaintiff had first recovered damages at law for the breach of it," therefore, "according to the Chancellors who preceded Lord Somers, not only were the courts of law competent to this investigation" (whether a party asking for specific performance of an agreement has a clear equity), "but they are the only courts which are competent to it."—*See* the Report, page 25.

The Law Commissioners thus assume that, previous to the time of Lord Somers, courts of equity sent a party applying for a specific performance to try his right at law, in order that the court of law might investigate whether he had a clear equity. But the true ground for thus sending the party to try for damages at law, was not that assigned by the Law Commissioners, probably not even that which is usually assigned, namely, to try whether the plaintiff had a legal right, *i. e.* whether the agreement was legal and the breach of it a wrong, points which in those early times a court of equity, it has been supposed, might have been unwilling to assume a right to determine. But, as Mr. Butler expresses it, "the grand reason for the interference of a court of equity is, that the imperfection of legal remedy, in consequence of the universality of legislative provisions, may be redressed. Hence, for a length of time after the introduction of equitable judicature into this country, it was thought necessary, that before equity should interfere, this imperfection should be manifested by the party's previously proceeding at law, so far as to show, from its result, the want or inadequacy of legal redress, and his claim for equitable relief."

If the defendant, in Lessee of Massey *v.* Touchstone, had brought his action against the lessor of the plaintiff for breach of contract in not making the lease, "all the circumstances of performance and non-performance" would have been before the court of law (so far as was necessary) to ascertain whether a lease had been made, whether there had been any breach of contract, and, if so, to estimate the damage, but not with a view to determine whether, if the agreement were unperformed, Lord Massey should be compelled to perform it. The question whether a broken contract should be specifically performed depends, not merely upon "the circumstances of performance and non-performance" important in an action for breach of contract, but upon other, or all the circumstances of the case. Not only does equity sometimes relieve by granting a specific performance where damages may not be recoverable at law, but sometimes it will refuse a specific performance where damages may be recovered at law, the rescinding and decreeing specific performance of contracts being in the discretion of the courts. If a plaintiff's title be involved in difficulties which cannot be immediately removed, equity will not compel the defendant to take a conveyance, though he might at law be subject to damages for not completing his purchase. 1 Fonbl. 190, note (*i.*); and *see* Mortlock *v.* Buller, 10 Ves. 292. Thus irrespective of the particular case before Mr. Justice Kelly, the circumstances of performance or non-performance, which are brought before a court of law with a view to damages for breach of contract to make a lease, do not necessarily include those circumstances upon which it must depend whether a specific performance of that contract will be decreed in equity. The latter are not "the proper legitimate, constitutional subjects of common law jurisdiction." The judges at Calcutta propose to make them so, but they are not so at present, and were not so at the time when the Report of the Law Commissioners was being written.

As I think all courts should be empowered to examine parties, if not vivâ voce, at least upon interrogatories, I think such a court as that proposed by the Law Commissioners should possess the power in question, and if an outstanding term should be set up in an action of ejectment, should be authorized to determine the effect of such term upon the same principles as a court of equity.

It is unnecessary to dwell upon those cases, much insisted upon by the Law Commissioners, in which judges have expressed opinions regarding the boundaries of legal and equitable jurisdiction, which have been long since overruled: no doubts or questions that the latter decisions are the more reasonable, and must prevail.

The Law Commissioners deduce from Moses *v.* Macfarlane, and Farquharson *v.* Pitcher, "that courts like the Court of King's Bench ought to be furnished with the means of doing justice in all cases within their jurisdiction, and that courts of conscience, inasmuch as they cannot be furnished with such means without

without great risk of injustice, ought not to be suffered to exist at all." If the superior courts could dispose of claims of small amount at a proportional expense, courts of conscience and tribunals of that description might be dispensed with; but hitherto no court in any considerable degree capable of a sound administration of justice has been contrived or established, in which the expense of litigating small demands has not been excessive, as being disproportionate to the matter sued for. Thus courts of conscience and courts of requests for deciding petty matters have been hitherto necessary evils. For the reasons already given, it appears to me that the Law Commissioners propose to erect but a very bad description of court of conscience, a court which cannot be maintained without great expense to the country, if not to the parties, and which will be the more mischievous because it is to exercise unlimited jurisdiction.

I have long thought that, under the judicial system at present existing, a court should be debarred from entertaining a suit or action in which it could not administer complete justice; therefore, that a court of law should have no jurisdiction over cases in which the effect of the judgment at law would directly or indirectly be annulled in equity. In an action at law, the moment it appears, although not specially pleaded, that matter of equity beyond the jurisdiction of courts of law is involved or incidentally comes in question, so as immediately to affect the rights of the parties, I think the plaintiff should be nonsuited, on such terms as to costs as a just discretion might direct. In this sense I think that an equitable title might be set up in ejectment as a bar to the further progress of the action.

I have already dwelt in general terms upon the question whether a court engaged in administering law should be allowed to "equitise," and, if so, to what extent: Lord Eldon has said of the separation of courts of law and equity, it "mainly contributes to the complete and effectual administration of justice in this country, and secures to the people an administration of justice to an extent and in a degree such as are unknown, and must be ever unknown where that separation is not effectually made and observed." He perhaps overrated the effects of the separation alluded to, and it certainly appears to me that in some instances the separation need not be observed so strictly as at present: but the Law Commissioners would wholly abolish it. The weight of authority is indeed against them; but they make light of it, and assail even Lord Redesdale, to whom they impute the following sophism:—"The Scotch courts are bad. The Scotch courts administer law and equity together. Therefore, courts which administer law and equity together are bad." It is fortunate for the memory of Lord Redesdale, which must otherwise have been grievously damaged through this perversion of his argument by the Law Commissioners, that what he did say is contained in his judgment in Shannon *v.* Broadstreet, and is published in the report of that case. But experience as well as authority is opposed to the views of the Law Commissioners. I have shown what have been the results of experience in these matters in the United States of America; and the experience which England had of the Court of Exchequer, although equity was administered therein as distant from law as could well be in a court administering both law and equity, was the chief reason why the equitable jurisdiction of that court was taken away, and given to the Court of Chancery, in the year 1841.

I have no doubt that if the proposed changes be salutary for India, it would be at least equally salutary for England to effect similar changes in that country, and therefore there is reason to believe that these propositions of the Law Commissioners will be duly canvassed by competent jurists, before their adoption in India is permitted.

(signed) *H. Roper.*

Fort William, Home Department, Legislative, 23 November 1843.

Legis. Cons. 23 Nov. 1843. No. 27.

The following extract from the proceedings of the Right honourable the Governor-general of India in Council, in the Legislative branch of the Home Department, under date the 23d November 1843, is published for general information.

"Read a second time the draft of a proposed Act, dated the 30th September 1842, and published in the Calcutta Gazette of the 1st October 1842, for the better administration of justice, within the town of Calcutta, in small causes not included within the jurisdiction of the court of requests.

"*Resolution.*

No. 1.
On Civil Judicature in the Presidency Towns.

"*Resolution.*—The Right honourable the Governor-general in Council resolves, that the following amended draft on the subject be published for general information:

ACT, No. of 1843.

"An Act to facilitate the Administration of Justice, by the Establishment of a new Court for the hearing and determining of Causes of small Amount.

"1. Whereas it is desirable that a court should be established in Calcutta for the hearing and determination of causes of small amount, and also to provide, in certain cases, for a rehearing of the same by way of appeal:

"It is hereby enacted, that the judges of the Supreme Court of Judicature at Calcutta, shall be ex-officio Commissioners of the court hereby constituted, and together with so many other Commissioners not exceeding three, as the Governor-general in Council shall from time to time appoint, shall from and after the notification hereinafter mentioned of the constitution of the court, be a court of record, to be called "The Court for the trial of Small Causes at Fort William in Bengal;" and that Charles Waire Brietzeke, Esq., and Raboo Russomoy Dutt, the present Commissioners of the court of requests now established in Calcutta, shall be two of the first Commissioners of the court hereby constituted.

"2. And it is hereby enacted, that each ex-officio, and each other Commissioner of the court hereby constituted, shall, in open court and before entering upon the duties of his office as a Commissioner of the said court, be sworn diligently and honestly to administer justice as a Commissioner of the said court, according to the best of his knowledge and ability: Provided always, that in the event of any Commissioner objecting to take an oath, from religious scruples, it shall be lawful for such Commissioner to make a solemn affirmation to the same effect, in lieu of the oath required to be administered and taken in manner above-mentioned; and the said Commissioners are hereby empowered to administer such oath or affirmation to each other.

"3. And it is hereby enacted, that the Commissioners of the said court, or any of them, may, and they hereby are respectively authorized, severally, as well as jointly, to perform all such duties other than the appellatory duties hereinafter mentioned, as the Commissioners of the said court are hereby required to perform, and severally as well as jointly to exercise all such powers and privileges, except as aforesaid, as the Commissioners of the said court are entitled to under the provisions of this Act.

"4. And it is hereby enacted, that sittings for the purpose of trying such causes, and adjudicating upon such matters as may be lawfully tried and adjudicated upon by the Commissioners of the said court, may be holden before any one or more of the said Commissioners; and separate sittings may be holden before different Commissioners at one and the same time, at any convenient place within the town of Calcutta.

"5. And it is hereby enacted, that, as soon as conveniently may be done upon the passing of this Act, it shall be notified by the Government of India, by publication thereof in the Gazette, that the court hereby constituted is constituted and empowered to act as such court as aforesaid, and that the court of requests for the town of Calcutta has ceased to exist, and thereupon, and upon the publication thereof aforesaid, the said court of requests shall cease to exist: Provided always, that no judgment or order, or any other act whatever legally had, made, done or pronounced by the said court before it shall so cease to exist, shall be avoided, or in any respect affected by the provisions of this Act, but shall remain in full force and virtue in the same manner as if this Act had not passed, nor shall any actions, suits, causes or other proceedings depending in the court of requests at the time of the said court so ceasing to exist, be in any respect abated, but the same shall be transferred to the court hereby constituted, and shall be determined in the said court in like manner and by the same rules and forms of proceeding to all intents and purposes, as if the said court of requests were continuing, and the same were determined therein, and all papers, books, muniments and other things of, or in the said court of

requests,

requests, shall be transferred and delivered over to the court hereby constituted, to be deposited and preserved in and by the said court.

" 6. And it is hereby enacted, that the jurisdiction of the court hereby constituted shall extend to the hearing and determining of all matters over which the said court of requests has or may have jurisdiction, and to the trial and adjudication of all matters over which the Supreme Court of Judicature at Fort William in Bengal, on its plea side, has or may have jurisdiction: Provided always, that the party defendant shall be an inhabitant, at the time of the institution of the suit, within the local limits of the jurisdiction of the said Supreme Court; and it is hereby provided, that every person who would be held amenable to the jurisdiction of the Supreme Court by reason of inhabitancy, if the suit had been instituted therein, shall in like manner be deemed subject to the jurisdiction of the court hereby constituted: Provided always, that no action, suit or other proceeding shall be brought in the said court for the recovery of any debt or damages exceeding 400 rupees, or for the recovery of any real estate exceeding in value 100 rupees per annum; and that no action for assault and battery, or for written or oral defamation, shall be cognizable by the said court.

" 7. And it is hereby enacted, that in all actions, suits and other proceedings whatever in the court hereby constituted, if one or both the parties be British subjects, Hindoos or Mahomedans, the Commissioners of the said court shall decide according to the law as administered in the like cases in the said Supreme Court of Judicature, subject, nevertheless, to such rules and regulations as may be herein expressly enacted, and as the said Commissioners may be authorized to make for regulating the process, forms of proceeding, including the statement and entry of the cause of action and defence, or other allegations in the suit, and the general practice of the court; provided that no person shall be incompetent as a witness either by reason of being a party to the suit, or married to, or of kin to any party to the suit, or of liability to the costs of the suit, or on any other ground of interest, but solely on the ground of defect of understanding or want of religious belief.

" 8. And it is hereby enacted, that the major part in number of the said Commissioners for the time being may and shall from time to time frame rules and orders concerning the process, forms of proceeding, including the mode of stating and entering the allegations of the respective parties in the progress of the suit, and the practice and the costs, and generally the conducting the business of the court; provided that such rules and orders shall not be enforced until they are confirmed and approved by the Governor-general of India in Council.

" 9. And it is hereby further enacted, that the said court, and each and every Commissioner thereof in his respective court, may and shall exercise such power and authority for the purpose of compelling the attendance of parties or witnesses, or for punishing contempts of the authority of the court, as the judges of the Supreme Court as aforesaid may lawfully exercise in the like case on the plea side of the court.

" 10. And it is hereby enacted, that all pleadings and other allegations of the parties shall be made orally before the said Commissioners, by the said parties or their attornies, and the legal result thereof shall be shortly entered in a book or books under the authority of the court, by some officer of the court; to which book or books the parties or their attornies shall have at all times access, without payment of any fee or reward, and shall be permitted, at their own expense, to take copies or extracts therefrom of any proceedings in the suit.

" 11. And it is hereby enacted, that in any action, suit or other proceeding, it shall be lawful for the said Commissioners, if they think fit, to adjourn the further hearing of such action, suit or other proceeding upon such terms, and for such time as they shall think fit; and if, on the hearing of any case, the Commissioner or Commissioners trying the same shall be desirous that the same should be heard before any one or more of the ex-officio Commissioners of the said court, it shall be lawful for such Commissioners, if they shall think fit, to refer the same to one or more of such ex-officio Commissioners, and for such purpose to adjourn the case; and the same shall be then heard and determined

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mined before the said ex-officio Commissioners, or one or more of them, as they the said ex-officio Commissioners shall think fit.

" 12. And it is hereby enacted, that if any person or persons shall find him, her or themselves aggrieved by any judgment or order made or pronounced by any one or more of the said Commissioners, not being an ex-officio Commissioner, in any action, suit or other proceeding involving any question of title to lands or real estate, or in any case where an order has been made directing the payment of a sum exceeding Company's rupees, such person or persons may, upon giving such security as the said Commissioners shall think proper, appeal against the said judgment or order to the ex-officio Commissioners of the said court, provided that any one or more of the said ex-officio Commissioners shall be competent to hear and determine the said appeal: Provided always, that no appeal shall be allowed upon the ground of the decision being against evidence, if there be any evidence to support it, or on the ground of falsehood imputed to the evidence: Provided always, that an application for leave to appeal shall be made to the said ex-officio Commissioners within one fortnight from the making or pronouncing of such judgment or order.

" 13. And it is hereby enacted, that the said Commissioners may and shall settle, as soon as conveniently may be after the passing of this Act, not exceeding two calendar months from the time of the constitution of the court, a table of fees to be paid by all and every person or persons engaged in any suit, action or other proceedings in the said court, for the transaction of all business relating to the same; and the said table of fees shall be hung up in a conspicuous part of the said court; provided that all such fees shall be subject to the approval and confirmation of the Governor-general in Council, and provided also, that no costs shall be chargeable against the adverse party for any fees paid to or any expense incurred by the employment of any counsel, or attorney acting as counsel, except in cases of appeal, or unless some one of the Commissioners shall certify that the circumstances of the case were such as to require the assistance of counsel.

" 14. And it is hereby enacted, that the Governor of Bengal shall appoint from time to time such clerks, officers and servants as shall be found necessary to the efficient transaction of all the business of the court, and to the due administration of justice; and such officers, clerks and servants shall receive respectively such reasonable salaries as the said Governor shall think proper to appoint, subject to the approval of the Governor-general in Council.

" 15. And it is hereby enacted, that the fees payable as aforesaid to the court hereby constituted shall be applied towards the payment and remuneration of the clerks, officers and servants above-mentioned, and generally towards the expense of maintaining the said court; and in case the said fees should exceed the amount required for these purposes, they shall undergo from time to time such revision and reduction as the Governor-general in Council shall think proper to make.

" 16. And it is hereby further enacted, that the said court hereby constituted shall have power by any rules and orders to be made, subject to such approval as aforesaid, to adopt all or any of the provisions and powers made and conferred by any lawful authority for and upon the court of requests, and which it may lawfully exercise at the time of its ceasing to exist as aforesaid, so far as the same are not repugnant to the provisions of this Act.

" *Ordered*, That the draft Act be re-considered at the first meeting of the Legislative Council of India after the 23d January 1844."

(signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

—No. 2.—

No. 2.
On giving Power to Commissioners of Court of Requests relating to Recovery of Merchant Seamen's Wages.

ON GIVING COMMISSIONERS OF THE COURT OF REQUESTS SO MUCH OF THE POWER GIVEN BY STAT. 5 & 6 WILL. 4, c. 19, TO JUSTICES OF THE PEACE IN ENGLAND, AS RELATES TO THE RECOVERY OF WAGES DUE TO MERCHANT SEAMEN, AND ON OTHER MATTERS CONNECTED WITH SUCH SEAMEN IN BRITISH INDIA.

Dated the 25th April 1844, with connected Papers.

EXTRACT from a Despatch addressed by the Government of India to the Honourable the Court of Directors, in the Legislative Department, No. 1; dated 2 January 1837.

Suggestion of the Bombay Government relative to a recent Act of Parliament (5 & 6 W. 4, c. 19), for the protection of Merchant Seamen.

Legis. Cons. 18 July 1836. Nos. 4 to 6.

61. THE senior magistrate of police at Bombay submitted to the local Government the expediency of passing an Act for giving effect under that Presidency to the Act of Parliament passed on the 30th of July 1835, intituled, "An Act to amend and consolidate the Laws relative to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service." The Advocate-general at Bombay was consulted on the subject, and his opinion, with the senior magistrate's suggestion, were forwarded to us, with the opinion of the Right honourable the Governor in Council of Bombay, that, although they considered the measure advisable, they did not deem it necessary to submit the draft of an Act, as the subject was applicable to all India, and would engage our attention as a general question.

62. We have forwarded the correspondence to the Indian Law Commissioners, and we have taken the opportunity of suggesting to them the expediency of conferring upon the commissioners of the petty court at Calcutta, so much of the power as is given to justices of the peace in England as relates to the recovery of wages due to seamen while in the port of Calcutta: we requested them to insert provisions to this effect in any new enactment which might be forthcoming, having reference to the petty court. The other branches of river jurisdiction referred to in the Act of Parliament belong to the bench of magistrates, and will engage the early attention of the Law Commissioners.

(No. 975 of 1836.)

From *E. H. Townsend*, Esq., Acting Secretary to the Government of Bombay, to the Secretary to the Government of India in the Legislative Department, Fort William; dated 3 June 1836.

Legis. Cons. 18 July 1836. No. 4.

Sir,

I AM directed by the Right honourable the Governor in Council to transmit to you, for the consideration of the Right honourable the Governor-general of India in Council, the accompanying copy of a letter from the senior magistrate of police, dated 8th April last, suggesting the passing of an Act, giving effect under this Presidency to the Act of Parliament passed on the 30th July 1835, intituled, "An Act to amend and consolidate the Laws relative to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service," with the opinion of the acting Advocate-general, and to state, for the information of his Lordship in Council, that although this Government consider the measures of the kind suggested by Mr. Warden advisable, this Government have not deemed it necessary to submit the draft of an

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an Act, because the subject applying to the whole of India, it will no doubt engage the attention of the Governor-general as a general question, should his Lordship be pleased to concur in the views taken by this Government regarding it.

I have, &c.

Bombay Castle, 3 June 1836. (signed) *E. H. Townsend,*
Officiating Secretary to Government.

(No. 137 of 1836.)

Legis. Cons. 18 July 1836. No. 5. Enclosure.

From *John Warden*, Esq., Senior Magistrate of Police at Bombay, to the Secretary to Government, Judicial Department; dated 8 April 1836.

Sir,

1. The Act of Parliament, of which the accompanying is a copy, intituled, "An Act to amend and consolidate the Laws relative to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service," was lately brought to my notice by Captain Hopkins, commander of the "Buckinghamshire." It has had effect from the 31st day of July last, and if, as I believe, it be in force, not only in India, but in every part of the world where a British merchant ship may be found to be subjected to its provisions, and there are two respectable British merchants to enforce them. I beg leave to suggest to the Right honourable the Governor in Council, that 50 copies be forthwith printed for the use of this, the collectors' and master attendants departments, and of others whom it may concern.

2. But if it should be said not to have effect here, I think the Government of India should be solicited to pass an Act giving it the sanction of law at this Presidency.

3. In the 47th para. of my report to the Law Commission, I stated my belief, "that there is no class of people who require more protection from tyranny and injustice than sailors," and I am gratified to find my opinion so soon justified by the passing of an Act of Parliament, "to give seamen all due encouragement and protection."

4. In the same report I stated that I was left to perform my "duty towards seamen without the guidance of a single Regulation, and that the general complaints were, that they were disrespectful, broke their liberty, refused to return to their ships, &c. &c." and the Governor will observe that this Act of Parliament gives me authority to act efficiently in all these matters, and at the same time to protect seamen from wrong, and to recover their wages for them in a summary mode, without their having recourse to the Supreme Court, the slow and formal proceedings of which render it quite useless to sailors whose ships are about to sail, and which is just the time when disputes arise between commanders and seamen.

I have, &c.

Bombay Police Office, 8 April 1836. (signed) *John Warden,*
Senior Magistrate of Police.

(No. 19 of 1836.)

From *H. Roper*, Esq., Acting Advocate-general of Bombay, to *J. P. Willoughby*, Esq., Secretary to Government; dated 4 May 1836.

Sir,

I have had the honour to receive your letter of the 28th ultimo, requesting my opinion as to the applicability to British India of the 5th & 6th Will. 4, c. 19, intituled, "An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service."

The statute appears to me to have been drawn up in a very loose manner, and I am unable to give a decided or satisfactory opinion with respect to it; indeed,

your

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your inquiry is so general, that in order to give an adequate answer, it might perhaps become necessary to comment at great length upon each of the 55 sections in the Act.

The powers given by several clauses in the statute to one or more justice or justices of the peace in any part of his Majesty's dominions, and the powers given by the 51st section to collectors or other chief officers of the customs at the several ports of the United Kingdom, and of the British possessions abroad, unquestionably are conferred on justices of the peace, collectors and chief officers of customs respectively, in British India.

I incline to think that vessels belonging to Bombay, or registered there, and the crews of such vessels, are not within the second section of the statute, which provides that written agreements shall be entered into with his seamen by the master of any vessel belonging to any subject of his Majesty of the United Kingdom, trading to parts beyond the seas, or of any British registered ship of the burthen of 80 tons or upwards, employed in any of the fisheries of the United Kingdom, or in trading coastwise, or otherwise. The 54th section provides, that the Act shall not extend to any ship registered in or belonging to any British colony, having a legislative assembly, or to the crew of such ship, while such ship shall be within the precincts of such colony. India, strictly speaking, is not a British colony, and has not a legislative assembly; but the Supreme Government of India can now make laws; and therefore, and as the 2 Geo. 2, c. 36, the 2 Geo. 3, c. 31, and the 31 Geo. 3, c. 39, did not apply to vessels belonging to or registered in any port in India, or to the crews of such vessels, I conclude the late Act was not intended to affect such vessels or crews. Besides, though heavy penalties are imposed by the Act, it would seem that no means of recovering, in India, any greater penalty than 20 *l.* is provided by the 53d section.

The register office for seamen is clearly to be established at the port of London only, and it is unnecessary to establish any such register office in India.

I have, &c.
(signed) *H. Roper*,
Acting Advocate-general.

Bombay, 4 May 1836.

(True copies.)
(signed) *E. H. Townsend*,
Acting Secretary to Government.

(No. 192.)

Legis. Con. 18 July 1836. No. 6.

From *W. H. Macnaghten*, Esq., to *F. Millett*, Esq., Secretary to the Indian Law Commissioners; dated 18 July 1836.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to transmit to you, to be laid before the Indian Law Commissioners for their consideration, the accompanying copies of a letter from the acting Secretary to the Government of Bombay, dated the 3d ultimo, and of its enclosures, on the subject of passing an Act for giving effect, under the Presidency of Bombay, to the Act of Parliament of the 30th July 1835, relative to merchant seamen.

2. It has occurred to his Lordship in Council, that it would be expedient to confer upon the commissioners of the petty court so much of the power as is given to justices of the peace in England, as relates to the recovery of wages due to seamen while in the port of Calcutta, and the Law Commissioners are requested to insert provisions to this effect in any new enactment that may be forthcoming, having reference to the petty court. The other branches of river jurisdiction referred to, would seem to belong to the bench of magistrates, but it is requested that the whole subject may engage the early attention of the Law Commissioners.

I have, &c.
(signed) *W. H. Macnaghten*,

Council Chamber,
18 July 1836.

No. 2.

EXTRACT from a Despatch addressed by the Government of India to the Honourable the Court of Directors, in the Legislative Department, No. 7; dated 16 April 1838.

Construction of the Stat. 5 & 6 Will. 4, c. 19, a law required to enable Captains and Seamen to dissolve an Agreement of Service when mutually willing to do so.

Legis. Cons. 29 Dec. 1837. No. 1 to 3.

22. AT our consultation of the annexed date, we took into consideration a reference from the chief magistrate of Calcutta, on which the Right honourable the Governor of Bengal had obtained the opinion of the Advocate-general; we concurred with our law adviser in thinking, that the provisions of section 38 of the Statute 5 & 6 Will. 4, c. 19, is applicable to Calcutta. With reference, however, to the date of that law (30 July 1835), which is posterior to the date (14 March) of Act No. IV. of 1835 of this government, we thought that it could not be legally administered otherwise than by two justices of the peace.

23. The chief magistrate further stated, that he had been called upon by the commanders of ships frequenting this port to comply with the terms of sect. 41 of the statute law above cited. On this point it appeared to us, in accordance with the views of the Advocate-general, that the law in question was not applicable to the territories of the East India Company; we however, desired the chief magistrate, if he should be of opinion that the provisions referred to are essentially necessary to the protection of sailors frequenting this port, to submit for our consideration the draft of a law embodying those or similar provisions.

(No. 2405.)

Legis. Cons. 29 Dec. 1837. No. 1.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of Bengal, to *R. D. Mangles*, Esq., Officiating Secretary to the Government of India, Judicial Department; dated 5 December 1837.

Sir,

Judicial Dep.

I AM directed by the Honourable the Deputy Governor of Bengal to transmit to you, for the purpose of being laid before the Government of India, for their consideration, the accompanying documents, in original, as specified in the margin.*

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of Bengal.

Fort William, 5 December 1837.

Legis. Cons. 29 Dec. 1837. No. 2.

From *D. M'Farlan*, Esq., Chief Magistrate of Calcutta, to *R. D. Mangles*, Esq., Secretary to the Government of Bengal; dated 3 February 1837.

Sir,

Enclosure.

I HAVE the honour to report, that I have been called upon by the commanders of ships frequenting this port to comply with the terms of the 41st section of the Act, cap. 19, of the 30th July 1835, when they had individuals among their crew with whom they were disposed to part, and who had no objections so to part with their commander; with a desire of doing what lies in my power to facilitate such agreements, I have entered on the ship's articles a narration of the fact in the following form:—

"Certified, that William Ramsay, master, and Peter Goldie, able seamen, appeared before me this day, and both expressed their willingness that the articles entered into between them to serve on the "Jean" should be at an end; to which I do not object.

"(signed) *D. M'Farlan*,
"Calcutta Police Office, 5 March 1836." "Chief Magistrate."

I need

* Letter from Calcutta Chief Magistrate, dated 3d February 1837. Letter to Advocate-general, dated 7th February 1837. Letter from Calcutta Chief Magistrate, with Enclosure, dated 8th November 1837. Letter to Advocate-general, dated 27th November 1837. Letter from Advocate-general, dated 28th November 1837.

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I need not remark, that I am not one of the authorities mentioned in the Act; indeed, doubts have been started from high authority, whether the Act applies at all to this country; there appears, however, a necessity to meet the wishes of officers of ships wishing to be relieved of parties disposed to part with them, and I have not hesitated to act upon it. The sanction of Government to the arrangement would, however, seem desirable.

I have, &c.
(signed) *D. M'Farlan*,
Chief Magistrate.

Calcutta Police Office, 3 February 1837.

(No. 283.)

From *R. D. Mangles*, Esq., Secretary to the Government of Bengal, to *John Pearson*, Esq., Advocate-general; dated 7 February 1837.

Sir,

I AM directed by the Right honourable the Governor of Bengal to transmit to you the accompanying copy of a letter from the chief magistrate of Calcutta, dated the 3d instant, and to request that you will favour his Lordship with your opinion on the subject of it. Judicial Dep.

I have, &c.
(signed) *R. D. Mangles*,
Secretary to the Government of Bengal.

Fort William, 7 February 1837.

From *D. M'Farlan*, Esq., Chief Magistrate of Calcutta, to *F. J. Halliday*, Esq., Officiating Secretary to the Government of Bengal; dated 8 November 1837.

Sir,

I HAVE the honour to forward, for the information of Government, the accompanying copy of a deposition by John Geary, first officer of the ship "Repulse," and to state, that the doubt under which we labour as to the applicability of the Act 5 & 6 Will. 4, c. 19, s. 38, stands in the way of the prompt administration of justice.

2. If that clause were applicable, we could save the complainants from the delay and expense incident to a prosecution before the sessions of the Supreme Court.

3. The Act of this Government, No. IV. of 1835, giving power to one justice, will not apply to this law, even if made applicable to Calcutta, for it was passed before the English.

4. I have the honour respectfully to state, that I have not been favoured with any reply to communications from this office of 19th August 1836, 22d November 1836, and 3d February 1837.

I have, &c.

Calcutta Police Office,
8 Nov. 1837.

(signed) *D. M'Farlan*,
Chief Magistrate.

THE information and deposition of *John Geary*, taken upon oath by me, David M'Farlan, one of Her Majesty's Justices of the Peace in and for the town of Calcutta, at Fort William, in Bengal, the 4th day of November 1837, who, on his oath, saith:—I am first officer of the "Repulse," the defendant, John Hunter, is boatswain's chief mate. On Sunday last, about four in the morning, all hands were called to make sail; we were then at the Sand Heads. The hammocks were piped up; the boatswain; reported 50 hammocks not brought up; I went below with the boatswain; a hammock was hanging lashed up; Hunter answered, that it was his; I desired him to take it down; he said he would not take it on deck,

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deck, though he would take it down. He used abusive language, very offensive; I do not recollect the exact words; I was excited; I called out to the officer to cut down the hammocks, if they could not find owners; defendant lowered his hammock, and took it five yards, throwing it behind the main ladder on the carpenter's bench; I ordered him to take it on deck; he said, he would be damned if he would; I ordered him on deck; Roberts stowed the hammock in the netting; the defendant was on the quarter deck, using violent abusive language towards me; I ordered him on the poop, where he would not go; I attempted to force him; I did not strike him, I merely shoved him; he then struck me on the left side of the head, seizing me by my clothes; I threw him down on the deck; Major Trelawney sent his recruits to seize him; he was then taken aft, and both legs put in irons; I know of no cause to lead to this, except that defendant abused me for ordering an anchor watch the evening before.

(True copy.)

(signed *D. M'Farlan*,
Chief Magistrate.

No. (2313.)

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of Bengal, to *John Pearson*, Esq., Advocate-general; dated 27 Nov. 1837.

Sir,

Judicial Dep.

In continuation of my predecessor's letter to your address, No. 283, of the 7th of February last (to which no reply has been received), I am directed by the Honourable the Deputy-governor of Bengal to transmit to you, in original, the accompanying letter from the chief magistrate of Calcutta, dated the 8th instant, with its enclosure, and to request that you will favour his Honour with your opinion as to whether Act 5 & 6 Will. 4, c. 19, s. 35, is applicable to Calcutta.

2. With your opinion, the return of the chief magistrate's letter is requested.

I have, &c.

(signed) *F. J. Halliday*,
Officiating Secretary to the Government of Bengal.

Fort William, 27 Nov. 1837.

From *J. Pearson*, Esq., Advocate-general, to *F. J. Halliday*, Esq., Officiating Secretary to the Government of Bengal; dated 28 Nov. 1837.

Sir,

I have the honour to acknowledge the receipt of your letter relative to the statute 5 & 6 Will. 4, c. 19.

2. It is quite clear that many of the clauses of the statute are applicable only to the ports of the British islands, and some of them only to those of England; I need only instance those which relate to parish apprentices; some of them, however, are of wider application. The 38th section, indeed, speaks merely of ships "belonging to any subject of the United Kingdom," but it gives the power of punishing for an assault committed in them, to "any two justices of the peace in any part of his Majesty's dominions." I certainly think this section is so far applicable to India, that two justices of the peace in Calcutta have authority given them to interfere "upon complaint of the party aggrieved;" I do not think that a single justice will be sufficient. The Act of the Legislative Council, No. IV. of 1835, applies only to laws then in force; it was passed 14th March 1835; the 5th & 6th Will. 4 bears date 30th July in the same year.

3. I do not remember whether I replied officially to the letter sent me in February last relative to the 41st section of the same Act, but, if not, I feel sure that I did so in some manner to the chief magistrate. It is, certainly, a question which I then did, and yet do, entertain doubts; I conceive that this clause must have been intended for India as well as for other parts of the world, yet

it

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it hardly seems to me that the intention has been carried into effect, or that India is indeed included in it, for these territories cannot be looked upon as a "colony or plantation;" such, at least, is the opinion which has always seemed to me just upon the subject. I have also understood, that not long before my arrival in India, a question as to the navigation laws turning upon this point, was brought before the Supreme Court, and that the necessary inference from the decision was, that it held such opinion to be correct.

I have, &c.

(signed) *J. Pearson*,
Advocate-general.

Fort William,
28 November 1837.

(No. 1.)

From *R. D. Mangles*, Esq., Officiating Secretary to the Government of India, to the Officiating Secretary to the Government of Bengal, dated 29 Dec. 1837.

Legis. Cons. 29 Dec. 1837. No. 3.

Sir,

I AM directed by the honourable the President in Council to acknowledge the receipt of your letter, dated the 5th instant, with its enclosures, relative to the Act 5 & 6 Will. 4, c. 19, and to communicate as follows in reply, for the information of the honourable the Deputy-governor of Bengal.

2. His honour in Council is of opinion, that section 38 of the Act above cited is applicable to Calcutta, but its date being posterior to the date of Act No. IV. of 1835, of the Government of India, it must be administered by two justices of the peace. He concurs with the Advocate-general in thinking section 41 of the Act not applicable to the territories of the East India Company.

3. If the chief magistrate shall be of opinion that the provisions of the section last referred to are essentially necessary to the protection of the sailors frequenting this port, he will report his sentiments to that effect, with a draft of a proposed Act to extend these or similar provisions, for the consideration of the Supreme Government.

4. The original papers which accompanied your letter are herewith returned, copies having been kept for record.

I have, &c.

(signed) *R. D. Mangles*,
Officiating Secretary to the Government.

Council Chamber,
29 December 1837.

COPY of a Despatch addressed by the Government of India to the Honourable the Court of Directors, in the Legislative Department (No. 1); dated 14 January 1839.

(No. 1.)

To the Honourable the Court of Directors.

Honourable Sirs,

IN continuation of paragraphs 22 and 23 of our despatch, No. 7 (16 April), of 1838, we have the honour to lay the accompanying papers before your honourable Court.

Legis. Cons., 8 Oct. 1838, No. 7 to 17.
" 12 Nov. 1838, No. 5 to 7.
" 14 Jan. 1839, No. 14 to 16.

2. The chief magistrate of Calcutta, with reference to our communication, as noticed in the above cited despatch, submitted the draft of a law for transferring to a single justice of the peace at Calcutta the powers vested by sect. 38 of the statute 5 & 6 Will. 4, c. 19, in two such justices, and with a view as well to the protection of merchant seamen frequenting this port as to conserving the interests of the police of the town, Mr. M'Farlan, supported by the opinion of the Chamber of Commerce, with whom he had communicated on the subject, further proposed to give local effect to the provisions of section 41 of that statute.

3. The statute in question having been passed since the date of the Charter Act, our colleague, Mr. Amos, was of opinion, that we were not competent to make

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make any alteration as respects section 38 thereof, especially as that section had been declared by the Advocate-general at the Presidency to be applicable to Calcutta.

4. With respect to section 41, Mr. Amos, satisfied with the opinion of the Advocate-general that it did not extend to the East Indies, stated, that if even a local law were passed for the territories of the East India Company in the terms of that section, it would be inoperative for the object proposed by the 5 & 6 Will. 4, that object being that in any suit for the wages of a British seaman, where such seaman has been discharged, the validity of the discharge shall be determined by a colonial certificate. Mr. Amos argued, that we could not, by any local law, give the same effect to the certificate of any officer appointed by the Indian Government, as regards suits for wages brought in England by British seamen.

5. After discussing the question in Council, and after various communications held by our colleague, Mr. Amos, with the chief magistrate and with Mr. Greenlaw, the Secretary to the Marine Board, Mr. Amos submitted the draft of a law, which having been approved by us and by the Right honourable the Governor-general, was published for general information on the 8th October last.

6. This law was designed to confer on any single justice of the peace at Calcutta the power of taking cognizance of and punishing the acts of masters of merchant ships discharging, without proper authority, seamen against their will, and before the expiration of their term of service, the acts of seamen refusing to obey the lawful orders of their masters, and all cases of assault or battery committed on board any merchant ship, provided that in all these several cases the offence is committed when the ship is on the River Hooghly, or the mouths thereof.

Vide Act XXI. of 1839, put up.

7. On the publication of this draft, we received a communication from the chief magistrate of Calcutta, suggesting the propriety of making petty felonies committed on the river between Calcutta and the sea, punishable by the Calcutta magistrates; but we determined to leave this point for consideration in connexion with a draft law for reviving the powers of the court of quarter sessions, which we expect to be soon laid before us.

8. Your honourable Court will perceive, from the papers now submitted to you, that we invited the advice of the honourable the judges of the Supreme Court at Fort William, in respect to the law which we proposed to enact, and that it is in consequence of the opinion entertained by them, that we are induced thus specially to submit the entire question for your consideration.

9. The honourable the judges agree in opinion, that the provisions of the Act 5 & 6 Will. 4, c. 19, are applicable to India, and that under section 43 of the 3 & 4 Will. 4, c. 85, we are not competent to pass the proposed Act, in so far as, in some respects, it is understood to vary the provisions of the first-cited statute.

10. We believe the proposed law to be of considerable importance, both as respects the police of the town and the navigation of the port of Calcutta. But, in consequence of the communication from the judges of the court here, we deem it expedient to suspend, for the present, the taking of any further measures in respect to it, and to submit the whole subject to the consideration of your honourable Court. It will be seen that the Advocate-general and the honourable the judges at this Presidency differ in their views as to the applicability, generally, to India of the statute 5 & 6 Will. 4, c. 19, and that we are ourselves disposed to think that the provisions we have had under our contemplation would not vary that statute, but would be collateral to it, applicable only to the remedy of local grievances not contemplated by the Imperial Legislature.

(signed) *W. Morison.*
T. C. Robertson.
W. W. Bird.
A. Amos.

Fort William,
14 January 1839.

No. 2.

(No. 1411.)

Legis. Cons. 8 October 1838. No. 7.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department; dated 10 July 1838.

Judicial Dep.

Sir,

With reference to your letter (No. 1), dated the 29th December last, I am directed by the Honourable the Deputy-governor of Bengal to request you will lay before the President in Council the accompanying copies of letters from the chief magistrate of Calcutta, dated the 2d April and 2d instant, and of its enclosures, for the purpose of being sent to the Law Commissioners for consideration.

I have, &c.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
10 July 1838.

Legis. Cons. 8 October 1838. No. 8.

From *D. M'Farlan*, Esq. Chief Magistrate of Calcutta, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of Bengal; dated 2 April 1838.

Sir,

With reference to your letter of the 9th January last (No. 79) I have the honour to state, that, under the opinion given therein, several convictions have taken place under the 38th clause of the Act of Parliament alluded to; the amount of fines levied has been sent to the Sailors' Home, as the institution corresponding most closely with the Merchant Seamen's Hospital, spoken of in the clause.

2. It would be desirable that the power given in that clause to two justices should be vested in one; of the soundness of that principle I have no doubt. The extent of the inconvenience arising from the present state of the clause will not be great. If possible, however, a specific law for this place should be passed; we have some trouble in finding what the law at home is;* we have no Acts of Parliament officially communicated to us. The penalty ought also to be expressed in the local currency, say 200 rupees fine, and simple imprisonment of two months in default of payment.

3. The 41st clause of the Act being declared not to be applicable, I should have apprehended that considerable inconvenience must have accrued to masters of vessels who for two years and upwards have quietly put the Act in practice, by having my certificate of discharge of seamen indorsed on their articles, as already described. It certainly is of importance to captains and their crews to have a ready means of causing the cessation of articles of agreement, and it is an undoubted matter of convenience to the town that it should not be inundated with European sailors without the knowledge of the magistracy. It is further of some little pecuniary importance to Government, that a portion of their wages should be set apart to meet the expenses that must for the sake of humanity be incurred in looking after European seamen when sick. I am strongly of opinion, therefore, that the present practice should be continued.

4. It would apparently be necessary that a law be passed here for the special case; for the master of a ship knowing that the Act is not in force here, might discharge his European crew without any form being gone through at all, and if the legal authorities at home agreed with those here, he would be liable to no legal question whatever. I add a note of such clause as I think ought to be passed.

5. The exposition now given by the Advocate-general of the applicability of certain clauses of this Act is founded, I conclude, upon the use of the words "His Majesty's dominions,"† in those clauses, and on that footing clauses 6, 10, 14, 15, 16, 38, 40, 51, 53, are probably applicable here. The provisions of clauses 10 and 14, are calculated to be useful, and I shall not hesitate to act upon them.

6. It

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* Yet the sentence is guided by the home law.

† Yet the Acts passed by the Government here speak of the territories of the East India Company; so also does the Act 3 & 4 Will. 4, c. 55.

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6. It will be observed in the letters attached to this, that I have endeavoured to get the sense of persons connected with the shipping of the port, as to whether the home apprentice laws regarding the sea service might not be beneficially introduced here. From the tenor of the reply, and the fate of the Marine School ship, it will be better to confine legislation at present to the case of British sailors.

7. I cannot help thinking that much good might accrue to the youth of the country if greater encouragement were given them to enter the sea service. As governor of the free-school I am enabled to state that such an insight into the theory of navigation might easily be given to the boys of that institution, as would render them most useful apprentices, and enable them at a future period, to take their share in the large coasting trade of the country. The difficulty in cases of this kind is to make a beginning. This might perhaps be done by requiring the masters of the Honourable Company's pilot vessels to take two or more boys, and to teach them the rudiments of sailorship; the system might be left to extend itself. The unsound and wretched practice under which parents here look to posts for their children as mere clerks, might gradually give way to the more wholesome practice of educating them for the sea.

I have, &c.
(signed) *D. M'Farlan*,
Chief Magistrate.

Calcutta Police Office,
2 April 1838.

ACT.

It is hereby Enacted, That if after the date of the publication of this Act any master of any British or foreign vessel shall discharge or permit to abscond, at any of the ports in the British possessions in India, under the government of the East India Company, any one or more of the crew of the said vessel being British or foreign mariners, without the sanction in writing of an officer to be appointed in that behalf by publication in the official Gazette of the Presidency in which such port may be situated, by the Governor of the said Presidency, the said master shall, on conviction of the above offence before any justice of the peace, forfeit to the use of the nearest hospital or other place of refuge for European seamen, a sum not exceeding 200 rupees on account of each mariner so discharged or permitted to abscond, to be levied by distress of goods, and failing such distress the said master shall be liable to a period of imprisonment in the nearest common goal, not exceeding two months.

From *D. M'Farlan*, Esq., Chief Magistrate of Calcutta, to *W. Limond*, Esq., Secretary to the Bengal Chamber of Commerce; dated 15 Feb. 1838.

Sir,

Doubts having arisen as to whether certain provisions of the Merchant Seamen's Act, 5 & 6 Will. 4, c. 19, are in force in Calcutta, I have obtained an official opinion, as detailed in the accompanying copy of a letter from Mr. Halliday, that section 38 of the above Act, giving power to two justices to punish common assaults committed at sea, is applicable, and that section 41 is not applicable.

2. The removal of any doubt that existed in regard to the clause first abovementioned is so far satisfactory. It is desirable also, that we should know that the 41st section is not applicable. I am not aware, however, that the decision on these two point gives any criterion which we can safely apply to the other clauses of the Act.

3. It will be seen that the Government here propose to enact any such provisions as may be calculated to give protection to the seamen, and the object of the present reference is to have the benefit of the opinion of the Chamber of Commerce on the subject.

4. I am very anxious that the spirit of the 41st clause should be maintained here; considerable advantage to the police has attended the simple course described in my letter to Mr. Mangles of the 3d February 1837, and the readiness with

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with which captains of ships avail themselves of it (no inconvenience having resulted to them at home), renders me exceedingly averse to discontinue it. The practice enables us to keep for the poor sailor a part of his wages to answer calls in sickness, or to provide him with an outfit when he gets a new ship, and we know that he is authorized to be here. Under it, we are sure that seamen cannot be turned adrift without their full consent, or without the claims of justice being considered.

5. It is obvious that the Act not being applicable here, there can be no provision in it to make what I do illegal, for that is a mere assertion of a fact; but I should regret exceedingly if any opinion held by me should lead captains of ships to do any thing which might involve them in trouble at home; with this view, I venture to bring the matter to your notice, both that full publicity may be given to the state of the law, and practice under it, and that the opinion of the Chamber should be obtained as to whether it would be expedient to pass any law here enabling captains and seamen to part when so disposed.

6. There is another point of some consequence on which the opinion of the Chamber would be useful; viz. whether ships belonging to this port should not be required to take Christian apprentices, say from the free-school.

7. The phraseology of the 38th clause, is similar to that of the 10th, both using the words "His Majesty's dominions," I conclude we might act upon it here.

8. If agreeable to the Chamber to furnish me with any opinion as to the desirableness of passing any legislative enactment on these subjects, I should be happy to receive it for the ultimate consideration of Government.

I have, &c.

(signed) *D. M'Farlan,*
Chief Magistrate.

Calcutta Police Office,
15 February 1838.

From *W. Limond*, Esq., Secretary Bengal Chamber of Commerce, to *D. M'Farlan*, Esq., Chief Magistrate of Calcutta; dated 21 February 1838.

Sir,

YOUR communication of the 15th instant has been laid before the committee of the Chamber of Commerce, and, in reply, I am desired to intimate that the Chamber is distinctly of opinion that section 41, of 5 & 6 Will. 4, c. 19, is applicable to India, and cannot understand on what grounds it is held that it was not meant to be so applicable. However, as such high authorities have embraced a different opinion, the Chamber, appreciating with you the salutary provisions of said section, would presume to recommend that these be extended to the territories of the East India Company, by an enactment of the Supreme Government.

The Chamber also concurs with you in wishing to see Christian apprentices, say, from the free-school, employed in ships belonging to this port, but it would be diffident of the expedience of resorting to a coercive measure on the subject, unless it is customary in England to do so in analogous circumstances.

I have, &c.

(signed) *W. Limond,*
Secretary.

Bengal Chamber of Commerce,
21 February 1838.

From *D. M'Farlan*, Esq., Chief Magistrate of Calcutta, to Captain *T. T. Harington*, Master Attendant, Fort William; dated 27 February 1838.

Sir,

I HAVE the pleasure to forward to you a correspondence that has taken place between this office and Government on the subject of the Merchant Seamen's Act passed by the home Legislature in 1835.

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2. You will observe that Government express their readiness to pass an enactment having for its object the protection of seamen, and I have no doubt that they would willingly enact any other clauses that could be shown to be for the advantage of the country.

3. In the letter of Government there is no very clear index given of the reasons why one clause of the above Act is to be applicable to India, and another not; but I presume the point turns upon the use of the words "His Majesty's dominions;" wherever such phrase is used, the clause is understood to apply here in common with all other parts of such dominions.

4. On this rule of interpretation it is clear that the clauses 2 to 5 inclusive are not at present applicable, nor are clauses 7 to 9, 11 to 13, 17 to 37; clause 39; also clauses 41, 51; and the question occurs how far it would be desirable to urge Government to enact them, or any of them.

5. I should be very much obliged by your giving me your own opinion, and obtaining that of as many persons experienced in nautical affairs as you can command, as to whether all or any of these dormant clauses should be re-enacted here.

6. Obtaining this kind of evidence is certainly not within the proper sphere of my duty, but I am very averse to press upon Government the enactment of any laws which, in the opinion of competent judges, might not be necessary or be hurtful.

7. I have also the pleasure to annex copies of a letter from myself to the Chamber of Commerce on the subject of the present reference, and of their reply.

I have, &c.

(signed) *D. M'Farlan.*

Calcutta Police Office,
27 February 1838.

(True copies.)

(signed) *D. M'Farlan,*
Chief Magistrate.

No answer to this officially received.

From *D. M'Farlan*, Esq., Chief Magistrate of Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal; dated 2 July 1838.

Sir,

I HAVE, since writing the letter of the 2d April last, to which this is tacked, had occasion to communicate with the Chief Justice on the provisions of the Act alluded to in that letter, and I find that he "is of opinion that the Act extends to India, and that many of its provisions are in force here." Thus far I am authorized by him to say, and my own impression is, that he thinks that the Act applies here to British registered ships having crews on board articled in England. Much of what I have written above is therefore misplaced; I think it better however that it should stand, in order that Government may see how difficult it is for us to follow the directions of a law when we cannot tell, and the most learned have doubts whether the law is meant to be followed by us at all.

2. I take this occasion to trespass upon you with a short review of the several clauses of the above Act, and to suggest that it may be submitted to the Legislative Council whether such amendments might not be made on certain clauses of the Act, as would (not repeal but) adapt them to the circumstances of the place.

3. It seems clear that the 2d clause, and part of the 4th, do not apply here. Take the case of a British registered ship discharging its European crew and proceeding to China or the Mauritius manned by Lascars; the captain would not by the Act be compelled to go through the process therein described in regard to these Lascars. Again, it seems plain that the clause would not apply to Indian* registered ships; they are the most generally engaged in what is called the country trade. It may no doubt be said, that if the enforcement of the provision

* *See* Act 3 & 4 Will. 4, c. 35.

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provision be just and wise as against British ships, it would most certainly be just and wise in regard to Asiatic ships, which are the most numerous, and, generally speaking, commanded by men in no way superior in education and habits to commanders of large British vessels. For this class of ships it is clear that an Act of this Legislature would be necessary.

4. There is the class of foreign ships, Dutch, American, French; they often take in crews, or at least seamen, here; they are not to be compelled to adhere to these clauses. If the protection of seamen be the object of the Act, they should go through the process equally with British ships.

5. Clause 3, is plainly inapplicable here, but we might well consider whether the Legislature here should not enact it for country ships.

6. Clause 5 would seem capable of being applied here, but the provision appears the dictate of common justice, which the courts here would attend to without it.

7. Clause 6; we have abundant law similar to this in our bye-law; but the 3d clause of this Act makes a chief mate a seaman, and I have been called upon to commit one to the house of correction under it; whether that is a wise provision would seem to require consideration. It certainly does not apply to any but ships described in the 1st paragraph of this letter.

8. Clause 7 to 13 seem very just, and the principles ought to be applicable in all cases.

9. Clauses 14 to 16 had better be made to apply to the petty court, who have simple and efficient rules for speedy adjustment of such cases; but in regard to seamen comprehended in the description in the first paragraph, the case seldom occurs.

10. Clauses 17 and 18 are plainly law here.

11. Clauses 19 to 24 seem inapplicable.

12. Clause 25; this also is inapplicable, but the principle might be adapted to this country very easily.

13. Clauses 26 to 37 are plainly applicable at present, but only as regards disputes occurring here between masters and apprentices duly bound in England.

14. Clause 38 I have remarked on above, in paras. 1 and 2 of the preceding letter.

15. Clause 39; on this no remark seems necessary.

16. Clauses 40 and 43; for these we have a law in the Indian Criminal Act, at clause 71.

17. Clause 41; on this clause I have remarked above, in paragraph 3 and 4 of the preceding letter. If it is now law here, then my proceedings have been wrong for two years and upwards, and I ought instantly to tell any master of a ship who comes to me to cancel his articles, to go to any "two merchants" to get it done.

The inconvenience of this course would be very great, as I have explained in the paragraphs just quoted, and as no inconvenience has resulted to masters at home from following the present course, I beg to suggest that I be allowed to go on until the Legislature here can render the law applicable. Also 42.

18. Remaining clauses require no special note.

19. There is another important clause of the Marine Law under which I have lately been called upon to act; viz. Act 3 & 4 Will. 4, c. 55, s. 27;* whether that clause applies to India generally is not clear, from the use of the word "territory to His Majesty belonging,"† but I presume it would apply in the case of British registered ships, and ships registered in Calcutta British, and does the clause apply to them? Suppose the mate of a French ship to keep the register of that ship, he having been discharged, would the law apply to him? In reason, perhaps, it ought, but the letter of the law would not help us; I beg to suggest that this clause be made generally applicable.

20. I have

* Giving power to magistrate to try charges against persons for retaining Ships' Registers, and to sentence them to a fine of 100 *l.* commutable, if not paid, 12 months' imprisonment.

† *See* also the 3d clause, where the territories under the Government of the East India Company are specially alluded to as something different from the British Possessions in Asia.

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20. I have thus, at the risk of being thought tedious, and trespassing beyond my proper sphere, brought the questions connected with this Act as fully before Government as my limited time will allow of; I have only again to call attention to what is stated in the 2d paragraph of this letter.

I have, &c.

Calcutta, Police Office, 2 July 1838.

(signed) *D. M'Farlan*, Chief Magistrate.

P.S.—This subject appears to have engaged the attention of the authorities at Bombay, and to have led to a reference to the Law Commission.

Judicial Department, 10 July 1838.

(True copy.)

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Minute by the Honourable *A. Amos*, Esq.; (not dated.)

Legis. Cons. 8 Oct. 1838. No. 9.

I have conferred with Mr. M'Farlan upon the subject of the Merchant Seamen's Act, and have satisfied him that the only answer we can give is as follows:

We think that we cannot adopt the proposed draft for transferring the powers given by the 38th sect. of 5 & 6 Will. 4, c. 19, from two to one justice, as it would be deemed to "vary or affect" that Act, which the Government is not enabled to do, the Act having been passed since the last Charter Act.

With respect to the 41st section, we are advised by the Advocate-general that it does not apply to the East Indies, and his reasons appear to us satisfactory; we cannot, therefore, recommend to the Governor-general in Council, in his executive capacity, to grant you any authority under that section. We also think, that if we were to pass an Act for the East India Company's territories in the terms of the 41st section, it would be inoperative for the purpose proposed by the 5 & 6 Will. 4, which is, that in any suit for British seamen's wages, where the seaman has been discharged, the validity of the discharge shall be determined by a colonial certificate; we think that we could not, by any local law, give the same effect to the certificate of any officer appointed by the Indian Government, as regards suits for wages brought in England by British seamen.

We shall be happy to consider any propositions made by yourself or by the Chamber of Commerce, for applying to the East Indies such clauses of the 5 & 6 Will. 4, with or without modifications, as are clearly not at present applicable to those territories, as also for applying the statute to seamen not being British seamen, on sufficient grounds for legislating being shown, and the desired enactments being specifically pointed out.

Note by the Honourable *A. Ross*.

If the Act 5 & 6 Will. 4, c. 19, does not apply to India, I do not see why the Legislative Council of India should not be competent to pass an Act for the protection of merchant seamen in the port of Calcutta, adopting the provisions of the Act above mentioned, or any other provisions which might be deemed better adapted for the end in view.

(signed) *A. Ross.*

Legis. Cons. 8 Oct. 1838. No. 10.

Minute by the Honourable *A. Amos*, Esq.; dated 3 August 1838.

The original application made to Government was for transferring the powers of the 38th section of c. 19, 5 & 6 Will. 4, from two to one justice, and for applying the 41st and some other sections, to the East Indies. We have no power to alter the 38th section, and after various communications with Mr. Greenlaw and Mr. M'Farlan, I am led to conclude that the accompanying draft will be satisfactory to the parties requesting our interference, and will be useful and proper as a legislative measure, subject to such objections as may possibly be urged upon the draft being published.

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It will be observed, that when sailors refuse to work, and oblige a captain to put back, it is usually done out of the port of Calcutta, though before the ship quits the territories of the East India Company.

The recent instance suggested, of the captain of the "Kellie Castle" having dismissed about 80 English sailors at Calcutta, in consequence of being able to procure native sailors who could navigate his ship to China, may or may not, upon inquiry, be found to be strictly correct, but the suggestion illustrates the manner in which the town may be injured by the conduct of captains under similar circumstances, and the mischief is said by competent authorities to be a very common one.

(signed) *A. Amos.*

DRAFT ACT.

Legis. Cons. 8 Oct. 1838. No. 11.

1. IT is hereby enacted, that if any master of any merchant ship employed on sea voyages shall, during such time as such ship shall be in the river Hooghly, or mouths thereof, being part of the territories of the East India Company, without the sanction of a magistrate or justice of the peace first had and obtained, discharge any seaman against his will before the time of the expiration of the service of such seaman, he shall be liable, on conviction before any justice of the peace exercising jurisdiction within the town of Calcutta, to be punished with a fine not exceeding 100 rupees.

2. And it is hereby enacted, that if any seaman belonging to any merchant ship employed on sea voyages shall, during such time as such ship shall be in the river Hooghly, or the mouths thereof, being part of the territories of the East India Company, without justifiable cause to be proved to the satisfaction of the justice of the peace before whom he may be charged, refuse or wilfully omit to obey the lawful orders of the master of such ship, he shall be liable, on conviction before a justice of the peace exercising jurisdiction within the town of Calcutta, to be imprisoned with or without hard labour for any term not exceeding three months, if the offence be committed whilst the ship is in progress either to or from the sea, or for any term not exceeding one month, if the ship be lying at anchor off the town of Calcutta or Kidderpore.

3. And it is hereby enacted, that in the case of any assault or battery which shall be committed on board any merchant ship employed on sea voyages in the river Hooghly, or the mouths thereof, being part of the territories of the East India Company, it shall be lawful for any justice of the peace exercising jurisdiction within the town of Calcutta to hear and determine any such complaint, and to punish the offender by a fine not exceeding 100 rupees.

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India.

(No. 487.)

Legis. Cons. 8 Oct. 1838. No. 12.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India, to *W. H. Macnaghten*, Esq., Secretary to the Government of India with the Governor-General; dated 20 August 1838.

Sir,

I AM directed by the honourable the President in Council, to forward to you, to be laid before the Right honourable the Governor-general of India, the accompanying papers in original, as noted on the margin,* together with the draft

* Letter from Chief Magistrate of Calcutta, dated 22d November 1836, to the address of the Secretary to the Government of Bengal, with one Enclosure. Letter from Officiating Secretary to the Government of Bengal, dated 5th December 1837, with one Enclosure. Letter to Officiating Secretary to the Government of Bengal, dated 29th December 1837. Letter from Officiating Secretary to the Government of Bengal, dated 10th July 1838, with one Enclosure. Notes by the Honourable A. Amos, Esq., without date, and by the President in Council. Minute by the Honourable A. Amos, Esq., dated 13th August 1838. Private Correspondence with Mr. Greenlaw and Mr. M'Farlan, with one Enclosure.

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draft of a proposed Act for the protection of merchant seamen in the port of Calcutta.

2. His honour in Council solicits the sanction of the Governor-general to the draft of Act being published for general information, and requests, that if his Lordship should approve of the provisions of the proposed Act, his assent to its being passed without any essential alteration, may at the same time be communicated.

3. You will be pleased to return the draft of Act sent herewith, with your reply.

I have, &c.

(signed) *T. H. Maddock*,
Officiating Secretary to Government of India.

Fort William,
20 August 1838.

Legis. Cons. 8 Oct. 1838. No. 13.

From *W. H. Macnaghten*, Esq., Secretary to the Government of India with the Governor-general, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India; dated 13 September 1838.

Sir,

Legislative.

I AM directed to acknowledge the receipt of your letter (No. 487), dated the 20th ultimo, transmitting draft of a proposed Act, for the protection of merchant seamen in the port of Calcutta, and soliciting the Governor-general's sanction for its publication, and assent for passing it into law, if its provisions are approved, and, in reply, to enclose a copy of his Lordship's assent in the usual form.

2. I am desired to add, that the Act of 5 & 6 Will. 4, c. 19, is not available to the Governor-general for reference, but his Lordship has no hesitation in placing full confidence in the opinion of the President in Council, as to the legality of the proposed enactment, and its consistency with the provisions of the Act referred to.

3. The original enclosures of your letter are returned herewith.

I have, &c.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India with the Governor-general.

Simla, 13 September 1838.

(Copy.)

Legis. Cons. 8 Oct. 1838. No. 14.
Legislative.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act, for the protection of merchant seamen in the port of Calcutta, received from the honourable the President in Council, in Mr. Officiating Secretary Maddock's letter (No. 487), dated the 20th August last.

Simla, 13 September 1838. (signed) *Auckland*.

(True copy.)
(signed) *W. H. Macnaghten*,
Secretary to the Government of India,
with the Governor-general.

Legis. Cons. 8 Oct. 1838. No. 15.

THE following Draft of a proposed Act was read in Council for the first time on the 8th October 1838.

ACT, No. of 1838.

1. IT is hereby enacted, that if any master of any merchant ship employed on sea voyages shall, during such time as such ship shall be in the river Hooghly, or mouths thereof, being part of the territories of the East India Company, without the sanction of a magistrate or justice of the peace first had and obtained, discharge any seaman against his will before the time of the expiration of

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of the service of such seaman, he shall be liable, on conviction before any justice of the peace exercising jurisdiction within the town of Calcutta, to be punished with a fine not exceeding 100 rupees.

2. And it is hereby enacted, that if any seaman belonging to any merchant ship employed on sea voyages shall, during such time as such ship shall be in the river Hooghly, or the mouths thereof, being part of the territories of the East India Company, without justifiable cause to be proved to the satisfaction of the justice of the peace before whom he may be charged, refuse or wilfully omit to obey the lawful orders of the master of such ship, he shall be liable, on conviction before a justice of the peace exercising jurisdiction within the town of Calcutta, to be imprisoned with or without hard labour, for any term not exceeding three months, if the offence be committed whilst the ship is in progress either to or from the sea, or for any term not exceeding one month if the ship be lying at anchor off the town of Calcutta or Kidderpore.

3. And it is hereby enacted, that in the case of any assault or battery which shall be committed on board any merchant ship employed on sea voyages in the river Hooghly, or the mouths thereof, being part of the territories of the East India Company, it shall be lawful for any justice of the peace exercising jurisdiction within the town of Calcutta to hear and determine any such complaint, and to punish the offender by a fine not exceeding 100 rupees.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be re-considered at the first meeting of the Legislative Council of India after the 8th day of December next.

(signed) *T. H. Maddock*,
Officiating Secretary to Government of India.

Fort William,
8 October 1838.

(No. 407.)

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 8 October 1838.

Legis. Cons. 8 Oct. 1838. No. 16.

Sir,

I AM directed to acknowledge the receipt of your letter (No. 1411), of the 10th July last, with its enclosure, and, in reply, to forward to you, for the information of the Honourable the Deputy-governor of Bengal, the accompanying printed copy of draft of proposed Act for the protection of merchant seamen in the port of Calcutta, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette.

I have, &c.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

Fort William,
8 October 1838.

(No. 409.)

From the Government of India to the Honourable the Judges of the Supreme Court at Fort William; dated 8 October 1838.

Legis. Cons. 8 Oct. 1838. No. 17.

Honourable Sirs,

WE have the honour to forward to you, for any observations or remarks which you may desire to offer, the accompanying printed copy of draft of proposed Act for the protection of merchant seamen in the port of Calcutta, which will be published for general information in the Calcutta Gazette.

We have, &c.

(signed) *A. Ross.*
A. Amos.
W. Morison.
T. C. Robertson.

Fort William,
8 October 1838.

No. 2.

(No. 1994.)

Legis. Cons. 12 Nov. 1838. No. 5.

From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India, Legislative Department; dated 23 October 1838.

Sir,

Judicial Dep.

With advertence to your letter (No. 407), dated the 8th instant, giving cover to the draft of a proposed Act for the protection of merchant seamen in the port of Calcutta, I am directed by the Honourable the Deputy-governor of Bengal to forward, for submission to the Supreme Government, the accompanying original letter from the chief magistrate of Calcutta dated the 19th idem, and its enclosures, containing observations in reference to the same subject.

2. I have to request the return of the original documents when no longer required.

I have, &c.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
23 October 1838.

Legis. Cons. 12 Nov. 1838. No. 6.

From *D. M'Farlan*, Esq., Chief Magistrate of Calcutta, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, Judicial Department; dated 19 October 1838.

Sir,

In connexion with the subject legislated for in the draft Act of the 8th instant, I have the honour to transmit the particulars of a case of theft on board a ship at Fulta, also of an affray, magnified into a dacoity, which occurred on a coasting sloop about the 18th ultimo, below Garden Reach.

2. I was obliged, in obedience to the existing law, to make these cases over for decision to the Allypore authorities, very greatly to the dissatisfaction of the complainants, and it may fairly be a matter for inquiry, whether it would not have tended to promote the attainment of speedy justice at the least expense to witnesses and suitors, if the cases had been triable in Calcutta.

3. To men of the class of the prosecutors and witnesses in these cases, especially that of the "England," it would be an undoubted evil to have to go for justice to Allypore; under the most willing administration of the law, delays and frequent attendances will be necessary, and the means at a mofussul magistrate's command, for taking European evidence, and for translating it into the native tongues, are imperfect.

4. Had it been consistent with the law to retain the cases at Calcutta at all, it would have been necessary to make them over to the Supreme Court; this, in the great majority of shipping cases, would involve great distress to prosecutors, or else failure of justice,* but in the event of our summary jurisdiction being extended, it might be well to include cases happening on the river, as is proposed in the draft Act in regard to assaults, or perhaps the same power to punish petty thefts there committed, as is possessed by mofussil magistrates, under Regulations IX. of 1807, and XII .of 1818, might very well be entrusted to the Calcutta magistrates.

* The Sessions close in August, and do not open again till December.

5. The punishment in the case of natives could be enforced in the mofussil gaol, and an appeal might lie as at present to the commissioner.

6. Any change in the mode of trial of murders, and other serious offences not the subject of magisterial decision in the mofussil, occurring on sea-going ships on the Hooghly, is a question which possibly Government would not entertain at present.

7. It will readily be imagined that in the ships belonging to a thronged seaport like this, cases of theft and other crimes frequently occur at sea, and on the passage from the Sand Heads to the town. Over all felonies committed at sea the Supreme Court only have jurisdiction; over assaults committed at sea the magistrates of Calcutta have jurisdiction (s. 38, 5 Will. 4, c. 19); they should obviously have the power of disposing of petty felonies. Over felonies committed on ships in the river, the Supreme Court, or the courts at Midnapore, Hooghly or Allypore, have jurisdiction, according to the country of the criminal. In regard to

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to all classes guilty of petty felonies, the Calcutta magistrates should have jurisdiction in the same manner as the present draft Act provides in regard to assaults committed on the river.

I have, &c.

(signed) *D. M'Farlan*,
Chief Magistrate.

Calcutta Police Office,
19 October 1838.

River Case.

Chaundpaul Thannah, 15 October 1838.

Captain *Kay*, Commander Ship "England," v. *Woolfut Khidmudgar*.

Defendant is charged with stealing on board the ship "England," then lying near Fultah, on the 13th instant, three coloured neckcloths, value 1 r. 8 a.; one silver watch, No. 3152, value 40 r.

Defendant was taken up yesterday out of the ship "England."

16 October 1838.

Peter Kay sworn.—I am commander of the "England;" the watch and handkerchiefs are mine; the value of the watch is about 40 rupees, the handkerchiefs one rupee eight annas; they were in a pair of drawers, and a trunk which were open; they were brought to me by Mr. Childs, near Fultah.

John Childs sworn.—Defendant is my servant; he has been so for two months; I found the handkerchiefs here produced between the frame and the canvas of my cot; they were claimed by Captain Kay; on searching my trunk, the key of which the prisoner usually kept, I found the watch here produced; he confessed to me; when I went into the cabin, he drew back alarmed; he was anxious to go ashore.

Woolfut Khidmudgar examined; refuses to give any answer.

17 October 1838.

Archibald Clark sworn.—The second and third day after the defendant came on board, he said he had a silver fork and pencil-case for sale, and asked me to buy them; he spoke in broken English.

Edward Mason sworn.—I saw two silver forks and a pencil-case in defendant's possession; he offered them to me for sale; he spoke broken English.

(True copies.)

(signed) *D. M'Farlan*,
Chief Magistrate.

Memorandum.

Case of the crew of the sloop "Juggernoth Colloo," against that of the Arab ship "Fattle Rohoman."

Charge of robbery by open violence, preferred by the crew of a small trading sloop, "Juggernoth Colloo," from the coast to Calcutta, against the crew of an Arab ship, "Fattle Rohoman," the foundation of the whole being a collision caused by the freshes, of the two vessels in the night; when the charge was preferred, both vessels were off Calcutta; the principal witnesses, viz. pilots and preventive service men, were also in the town.

(signed) *D. M'Farlan*,
Chief Magistrate.

(No. 456.)

From *T. H. Maddock*, Esq., Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 12 November 1838.

Legis. Cons. 12 Nov. 1838. No. 7.

Sir,

I am directed to acknowledge the receipt of your letter (No. 1994) of the 23d ultimo, with one to your address from the chief magistrate of Calcutta, containing

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ing observations on the proposed Merchant Seamen's Act, and to state in reply, that the point to which Mr. M'Farlan's remarks apply, namely, the propriety of making petty felonies committed on the river between Calcutta and the sea punishable by the Calcutta magistrates, had better, in the opinion of the Presiden in Council, be left for consideration in conjunction with the Quarter Sessions Bill, about to come before the Legislative Council.

2. The original papers which accompanied your letter are herewith returned.

I have, &c.
(signed) *T. H. Maddock,*
Secretary to the Government.

Council Chamber,
12 November 1838.

Legis. Cons. 20 Sept. 1841. No. 1 to 4.

Copy of a Despatch addressed by the Government of India to the Honourable the Court of Directors, in the Legislative Department (No. 21); dated 27 September 1841.

To the Court of Directors.

Honourable Sirs,

In continuation of our despatch (No. 1) of 1839, dated the 14th January, we have the honour to forward the accompanying correspondence with the Government of Bengal, on an application from the Chamber of Commerce, noticing the difficulty experienced in preventing European seamen shipped in England, from deserting their ships, and in manning such ships afresh in this port.

(signed) *Auckland.*
W. W. Bird.
W. Casement.
H. T. Prinsep.
A. Amos.

Fort William,
27 September 1841.

(No. 1336.)

Legis. Cons. 20 Sept. 1841. No. 1.

From *F. J. Halliday*, Esq., Secretary to the Government of Bengal, to *T. H. Maddock*, Esq., Secretary to the Government of India, Legislative Department; dated 31 August 1841.

Sir,

I am directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying extract (No. 194) from the proceedings of the Governor of Bengal in the General Department, dated the 11th instant, with its enclosure, relative to the difficulty experienced in preventing European seamen shipped in England, from deserting their ships, and in manning such ships afresh in this port.

2. You will be pleased to return the original document, with your reply.

I have, &c.
(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

Fort William,
31 August 1844.

(No. 194.)

Legis. Cons. 20 Sept. 1841. No. 2.

Extract from the Proceedings of the Right honourable the Governor of Bengal, in the General Department, under date the 11th August 1841.

Read a letter from the Secretary to the Bengal Chamber of Commerce, dated the 7th instant, soliciting attention to the increased difficulty experienced in preventing European seamen shipped in England, from deserting their ships, and in manning their ships afresh in this port, and suggesting the expediency of vesting the magistracy with fuller authority than is now possessed, to inflict commensurate punishment on sailors who shall be proved to have broken their articles, or to have wantonly deserted their ships after having received their wages in advance.

Ordered

No. 2.
Order.

Ordered, That the above letter be sent in original to the Judicial Department of the Government of Bengal, for consideration in that department.

(True extract.)
(signed) *G. A. Bushby*,
Secretary to the Government of Bengal.

From *W. Limond*, Esq., Secretary Bengal Chamber of Commerce, to *G. A. Bushby*, Esq., Secretary to the Government of Bengal, Fort William; dated 7 August 1841.

Sir,

The Chamber of Commerce desires me most respectfully to solicit the attention of the Right honourable the Governor to the increased difficulty experienced in preventing European seamen shipped in England, from deserting their ships, and in manning them afresh in this port, proceeding, the Chamber feels assured, from the insufficiency of the punishment which awaits seamen who break their articles; finding the rate of wages here higher than that at which they were shipped, they do not hesitate to set those articles at nought, when new crews have to be engaged, and often these, at the last hour, stand on no ceremony in deserting from groundless objections, even after steamers are employed and the ships are actually under weigh, encouraged in such misconduct by the proved inefficiency of the law, and thus great loss is caused to trade by the additional expense which has to be incurred, and still more by the delay.

If required by his Lordship, the Chamber will readily furnish particular instances and proofs of what is advanced; at present, it may suffice to point to two cases of very recent occurrence.

The brig "Lena," after having proceeded down as far as Moyapore, was obliged to return to town, because the crew engaged refused to work the ship, being thus subjected to double pilotage and other charges. These men had received their advance of wages in cash before going on board. They were handed over to the police, and have been put into confinement for 30 days, after which they will come out with money in their pockets ready to repeat the trick so lightly punished.

The "Devon" shipped eight men, and, on proceeding next morning down the river by steam, they refused to go to sea in her, in consequence of which she was obliged to stop at Diamond Harbour; police officers went down and brought them up, and they were sentenced to confinement in the house of correction. Eight fresh hands had to be engaged, four of whom received advance from the agents in hard cash under promise of joining the boat next day to go down to the ship. These were seen in the bazaar next morning, but the crimps got hold of them, and got three out of the way; the fourth one, indeed joined the boat, but in such a sad state of intoxication, that he laid himself down and died. The money advanced to these men was lost, and ultimately the agents were obliged to hire other hands through the instrumentality of crimps. The ship was thus detained a number of days.

These two instances we cited, as being very recent, but by no means as being of an aggravated nature, and in neither these nor any other instances, have any sufficient reasons been assigned for declining to go to sea in the vessels they had shipped by.

It will rest with the wisdom of his Lordship to apply some remedial measure to the wide-spread evil. With every deference, the Chamber would presume to suggest to his Lordship's consideration the expediency of arming the magistracy with fuller authority than they now possess, by some legislative enactment, empowering them to inflict commensurate punishment on sailors who shall be proved to have broken their articles, or to have wantonly deserted their ships after having received their wages in advance, the short confinement with light labour, the extent of the punishment the magistrates can inflict, being, in practical operation, scarcely any punishment at all.

I have, &c.

Calcutta, Bengal Chamber of Commerce, 7 August 1841.
(signed) *W. Limond*,
Secretary.

Legis. Cons. 20 Sept. 1841. No. 3.

Chamber of Commerce; Seamen.

MINUTE by the Honourable *A. Amos*, Esq.; dated 15 September 1841.

IT will appear from the draft Act sent herewith, which we published, that the second section is precisely what the Chamber of Commerce are now asking for. Possibly the judges might not think us precluded from legislating in the cases of seamen hired in Calcutta, and not under English articles, but an Act so confined would, perhaps, not be worth passing. We can refer the Chamber of Commerce to the second section of our published draft, and observe, that we have sent the papers home, in consequence of some legal difficulties arising out of the Merchant Seamen's Act, but that we will draw attention to the subject again.

(signed) *A. Amos.*

15 September 1841.

(No. 128.)

Legis. Cons. 20 Sept. 1841. No. 4.

From *T. H. Maddock*, Esq., Secretary to the Government of India, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal; dated 20 September 1841.

Sir,

I AM directed to acknowledge the receipt of your letter, No. (1336), dated the 31st ultimo, with enclosure, relative to the difficulty experienced in preventing European seamen shipped in England from deserting their ships, and in manning such ships afresh in this port.

2. In reply, I am desired to request that you will submit to the Right honourable the Governor of Bengal the accompanying copy of a draft of proposed Act (which was published for general information), dated the 8th October 1838. His Lordship will observe that the second section of the draft Act provides measures to remedy the evil complained of by the Chamber of Commerce; but in consequence of some legal difficulties arising out of the Merchant Seamen's Act, his Lordship in Council has considered it expedient to refer the subject to the Honourable the Court of Directors, and their attention will be again drawn to it.

3. The original enclosures of your letter are herewith returned.

I have, &c.

Council Chamber,
20 September 1841.

(signed) *T. H. Maddock.*
Secretary to the Government of India.

Legis. Cons. 11 May 1844. No. 4.

EXTRACT from a Despatch addressed by the Government of India to the Honourable the Court of Directors, in the Legislative Department (No. 29); dated 20 December 1844.

Law Commissioners' Report relative to English Act anent Wages due to Merchant Seamen.

12. THE Law Commissioners furnished a Report, recorded on the annexed date, in reply to the reference made to them as reported in paragraphs 61 and 62 of the despatch from this department, dated 2d January 1837 (No. 1), on the subject of conferring upon the commissioners of the court of requests so much of the power given by the statute 5 & 6 Will. 4, c. 19, to justices of the peace in England, as relates to the recovery of wages due to merchant seamen. The matter did not claim our immediate attention.

(No. 10.)

Legis. Cons. 11 May 1844. No. 4.

From the Indian Law Commissioners to the Right honourable *Edward* Lord *Ellenborough*, Governor-general of India in Council; dated 25 April 1844.

Letter from Secretary to Government of India, dated 18 July 1836.

WHEN it was in contemplation to make a new enactment touching the jurisdiction of the court of requests, it occurred to the Governor-general of India in Council, that it would be expedient to confer upon the commissioners of that court

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court so much of the power given by the statute 5 & 6 Will. 4, c. 19,* to justices of the peace in England, as relates to the recovery of wages due to seamen, and the Law Commissioners were requested to insert provision to that effect in any draft of an enactment relating to the said court which might be prepared by them.

* An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom.

2. As we have not thought it advisable to recommend an enactment for extending the jurisdiction of the court of requests, we have considered whether it is necessary to make any special provision for the summary determination of the claims of merchant seamen for wages due to them; and, according to the direction of Government, we have given our attention to the whole subject of the jurisdiction over merchant seamen in India under the statute in question.

Enclosure in Letter from Secretary to Government of India, dated 18 July 1836.

3. Among the papers formerly communicated to us, we find a letter from the acting Advocate-general at Bombay (now the Chief Justice), in which, in answer to a reference from the Government of that Presidency, he observed that the statute under consideration was drawn up in so loose a manner, that he was unable to give a decided or satisfactory opinion as to its general applicability to British India, but that "the powers given by several clauses in the statute to one or more justices of the peace in any part of His Majesty's dominions, and the powers given by the 51st section to collectors or other chief officers of the customs at the several ports of the United Kingdom, and of the British possessions abroad, unquestionably are conferred on justices of the peace, collectors and chief officers of customs respectively in British India."

4. We think that there can be no doubt of the correctness of this opinion, seeing that the territories under the government of the East India Company are described in the title of the statute 3 & 4 Will. 4. c. 85, as "His Majesty's Indian territories;" and with respect to the term "British possessions," it is prescribed in section 119 of the statute 3 & 4 Will. 4, c. 52, that whenever it shall occur in that statute, or in any other Act relating to the customs, or to trade and navigation," it shall be construed to mean colony, plantation, island, territory or settlement belonging to His Majesty."

5. Among the provisions of the statute in question, to which effect is to be given "by any justice in any part of His Majesty's dominions," are those for enforcing the immediate payment of wages due to seamen. We think it competent to any justice of the peace in any part of British India to act upon the applications and complaints of seamen in regard to their wages, under sections 14 and 15 of the statute, in the manner therein directed; and we do not see any reason for making a different provision in India from that which obtains in the United Kingdom, and other parts of Her Majesty's dominions, in respect to such matters.

Seamen refusing to join their ships, or absenting themselves; harbouring deserters; claims of seamen for wages in certain cases.

6. We think, also, that it is competent to any justice, in any part of British India, to exercise jurisdiction in the cases provided for by sections 6 to 13 of this statute, and under section 53, to adjuge penalties and forfeitures for contraventions of the Act, and to levy the same.

7. We conceive that justices in India, under section 37, may determine claims or complaints of sea apprentices upon or against their masters, and of masters against their apprentices, provided that the apprentices are under indentures agreeably to the Act.

8. Also, that justices in India, under section 38, may take cognizance of common assaults committed on board ship, at sea or out of Her Majesty's dominions.

9. In Bengal, we apprehend, that one justice, by virtue of Act XXXII. of 1838, may exercise jurisdiction under the two sections last mentioned. In other parts of British India, two justices must sit in such cases.

10. Section 41 enacts, that seamen shall not be discharged at any of His Majesty's colonies or plantations, without sanction of the Governor or some functionary appointed by the Government in that behalf.

11. We think there is reason for the doubt expressed by a former Advocate-general, Mr. Pearson, as to the authority of Government to appoint officers to give effect to this section within these territories, inasmuch as they cannot be looked upon as a "colony or plantation," for although it is prescribed by statute, as we have noticed, that the term British possession shall be construed to mean any colony or plantation belonging to His Majesty, it is not prescribed conversely, that by "His Majesty's colonies or plantations," shall be understood "British possessions"

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possessions" generally; and as there cannot but be inconvenience at ports much resorted to by British shipping, as the principal ports in India are, from the want of authority in any of the functionaries there resident, to license the discharge of seamen when circumstances require it, we would advise that an Act be passed to remedy this defect.

12. We have already intimated, that we concur in the opinion formerly given by the acting Advocate-general at Bombay, that the collector or chief officer of the customs at any port in British India is empowered to act under section 51.

13. It is enacted in section 53, that all penalties and forfeitures incurred under the Act exceeding 20 *l.*, may be recovered "in any of His Majesty's courts of record at Westminster, Edinburgh or Dublin, or in the colonies." We would recommend that the power of adjudging such penalties and forfeitures be extended to Her Majesty's courts in India, and to the courts of the East India Company in places out of the jurisdiction of Her Majesty's court.

14. It has been questioned whether section 2 of this statute, which enacts that no seaman shall be taken to sea without a written agreement, is applicable to British ships proceeding on voyages from ports in British India, with crews engaged there.

15. By the said section, the master of a British registered ship is forbidden "to carry to sea on any voyage, either from this kingdom or from any other place, any seaman or other person, as one of his crew or complement, without first entering into an agreement in writing with every such seaman." We see no reason to doubt that ports in British India are among the "other places" intended by this enactment, and we conclude that the master of a British registered vessel carrying seamen from Calcutta, without having first entered into agreements with them as required, will be liable to the penalty prescribed by section 4.

4 Geo. 4, c. 80.

16. As Lascars are specially provided for by a particular statute, and Regulations made by the Government of India in pursuance of such statute, it may be presumed that seamen of this class are not within the scope of the enactment in question. But we apprehend that it is applicable to all seamen who are to be deemed or taken to be British seamen within the intent and meaning of the navigation laws.

17. The Advocate-general at Bombay was inclined to think that vessels belonging to Bombay or registered there, and the crews of such vessels, are not within the 2d section, because section 54 provides that the Act shall not extend to any ship registered in or belonging to any British colony having a legislative assembly, or to the crew of such ship, while it shall be within the precincts of such colony. He observed that India, strictly speaking, is not a British colony, and has not a legislative assembly, but that the Supreme Government can now make laws, and therefore, and because 2 Geo. 2, c. 36, 2 Geo. 3, c. 31, and 31 Geo. 3, c. 39, did not apply to vessels belonging to or registered in any port in India, and to the crews of such vessels, he concluded that the new Act was not intended to affect them.

18. It is to be observed, that the last of the statutes here referred to applied only to the coasting trade of Great Britain, and that the first, relating to ships trading to foreign parts, which was renewed and made permanent by the second, had not so wide a scope as the present Act, as it did not provide for vessels proceeding to sea from other places than the United Kingdom, but only for vessels beginning and ending their voyages at ports of the United Kingdom.

19. The new Act is extended so as to provide for all vessels belonging to subjects of Her Majesty, of the United Kingdom, and all British registered ships of 80 tons and upwards, proceeding to sea on voyages from the United Kingdom, or other places, and we think it comprehends all ships which, as belonging to or being registered in ports of the British territories in India, are entitled by law to the privileges of British registered ships. With respect to clause 54, we think the description of "colonies having legislative assemblies," was not meant to include the territories under the Government of the East India Company, to which that description is inapplicable, for a "legislative assembly" is a term which seems intended to describe those copies of the British Parliament which exist in British America and in the West Indies, to which there is nothing answerable in the Company's territories.

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20. The Advocate-general at Bombay, we observe, appears to have had no doubt of section 2 being applicable to ships registered in Great Britain proceeding on a voyage from Bombay with a crew engaged there.

We submit this our Report for the consideration of your Lordship in Council.

Indian Law Commission, (signed) *C. H. Cameron.*
25 April 1844. *D. Eliott.*

MINUTE of COUNCIL.

THE subject of the foregoing letter has been disposed of by the Governor-general in Council for the present.

11 May 1844.

From Sir *E. Ryan*, Knt., and Sir *H. W. Seton*, Knt., Judges of the Supreme Court at Fort William, to the Honourable the President of the Council of India in Council; dated 8 December 1838.

Legis. Cons. 14 Jan. 1839. No. 14.

Honourable Sirs,

WE have the honour to acknowledge the receipt of your letter, dated the 8th of October, enclosing for any observation we may desire to offer, a printed copy of a draft of a proposed Act for the protection of merchant seamen in the port of Calcutta.

2. After a careful perusal of the provisions of this draft Act, we beg to submit, for the consideration of the President of the Council of India in Council, that, as at present advised, we are disposed to think the local legislature is not competent to pass the proposed Act. It seems to us, that the Merchant Seamen's Act of 5 & 6 Will. 4, c. 19, is one manifestly of universal policy, and intended to affect all our transmarine possessions, and that it extends to India, though that country is not named.

3. The power of legislating conferred on the Governor-general in Council, by section 43 of 3 & 4 Will. 4, c. 85, provides, that the Governor-general shall not in any way repeal, vary, suspend or affect any provisions of any Act thereafter to be passed in anywise affecting the Company, or the territories, or the inhabitants thereof. We are disposed to think the proposed Act would vary the provisions of 5 & 6 Will. 4, and in so doing, as it seems to us, would exceed the powers of the local legislature.

4. The present letter must be taken to contain the opinions only of the two judges who sign it. We have had an opportunity of seeing the accompanying letter from Mr. Justice Grant to the President of the Council of India in Council; we beg only to observe, that we do not concur in the opinion stated by Mr. Justice Grant, as to the mode in which our communications may be sought in future, and that we are quite satisfied with the course which the Government have hitherto adopted.

We have, &c.

Court House, 8 December 1838. (signed) *E. Ryan.*
H. W. Seton.

From Sir *J. P. Grant*, Knt., Judge of the Supreme Court at Fort William, to the Honourable the Vice-President and Council of India; dated 7 December 1838.

Legis. Cons. 14 Jan. 1839. No. 15.

Honourable Sirs,

I HAVE perused the letter the judges of the Supreme Court have had the honour to receive from you, dated the 8th of October, enclosing for any observation we may desire to offer a printed copy of a draft of a proposed Act for the protection of merchant seamen in the port of Calcutta.

I am duly sensible of the attention you have done the judges the honour to pay them in submitting to their perusal before its being passed into a law, the draft of a proposed Act of the Legislative Council. But I think it my duty to

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state, that, except in matters affecting the jurisdiction or functions of the court I have the honour to sit in, with the extent and operation of which the judges must be supposed the most accurately conversant, I should consider the entertaining a desire to offer any observations upon an Act, the passing of which is contemplated by those to whom Parliament has committed the sole power and grave responsibility of making laws for this great empire, inconsistent with the duties of my office, and at variance with a just estimate of my own knowledge and ability.

Upon questions in the law which the Legislative Council of India may desire to put to me, as one of Her Majesty's judges, in reference to any new law which they may propose to make, I have, not without much consideration in a matter involved in great difficulty, and upon which no intimation has been given of the intention of Parliament, decided that it is my duty to give them any opinion, and in the present instance, although it is not so expressed in your letter, I think I may consider your transmission of the draft of the proposed Act to the judges as amounting to a demand of their opinion upon the necessity, as the law now stands, for the passing of such an Act, and upon the competency of the Legislative Council to pass it, although I hope I may be excused for saying that I think it would be more convenient, when the Legislative Council desire the opinions of the judges upon matters of law, that questions should be put in a more precise form, as is the manner adopted upon similar occasions by Parliament at home.

The two questions which I presume to be put upon this occasion, depend upon the question whether the Act of Parliament, 5 & 6 Geo. 4, c. 19, extends to the Queen's dominions under the government of the East India Company in India; I concur in opinion that it does, and that the proposed Act, of which a draft has been submitted to the judges, varies in some respects its provisions, which the statute 5 & 6 Gul. 4, c. 19, having been passed subsequently to 3 & 4 Gul. 4, c. 85, the Governor-general of India in Council is by this last-mentioned Act, sec. 43, prohibited from doing.

Reserving, therefore, to myself the right, if this Act shall be passed into a law, and any case under it shall be brought judicially before me, to alter my opinion if I shall see cause, upon a full argument, and upon further consideration, I am of opinion, as at present advised, that such law in so far as it agreed with the statute 5 & 6 Gul. 4, c. 19, would be unnecessary, and in so far as it differed from it, inoperative.

I have, &c.

Supreme Court-House, Calcutta,
7 December 1838.

(signed) *J. P. Grant.*

Legis. Cons. 14 Jan. 1839. No. 16.

MINUTE of the Honourable *A. Amos*; dated 15 December 1838.

I BELIEVE this Act to be of considerable importance, both as concerns the police of the town and the navigation of the port of Calcutta, and, therefore, it may be expedient to submit it for the consideration of the home authorities. It appears that the Advocate-general and the judges do not take the same view of the English statute. I am disposed to think that the provisions of an Act would not vary the English statute, but would be collateral to it, applying only to the remedy of local grievances not contemplated by the English legislature; however, it would not be prudent to incur the risk of the judges deciding, as it seems probable they would do, that we had exceeded our legislative functions, in which event no good would have been attained, but on the contrary, some disparagement incurred to the Government or the Supreme Court, or both.

With regard to the letter of Sir J. Grant, inasmuch as our request of his opinion has been complied with, it is perhaps, most prudent not to advert to the observations with which that opinion is accompanied; when occasion may require, I think those observations admit of a very satisfactory answer.

15 December 1838.

(signed) *A. Amos.*

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EXTRACT from a Despatch from the Honourable the Court of Directors (No. 11 of 1839); dated 24 July 1839.

19. WILL be replied to hereafter, together with the letter under date 14th January (No. 1) 1839.

61, 62. Expediency of conferring upon the Commissioners of the Court of Petty Sessions at Calcutta certain powers relating to the recovery of Seamen's Wages while in the Port of Calcutta.

ACT No. XXI. OF 1839.

Passed by the Honourable the President of the Council of India in Council, on the 26th August 1839.

AN ACT for the Trial of Prisoners charged with the commission of certain Petty Offences in the Town of Calcutta, and on the River Hooghly.

WHEREAS it is expedient to make further provision in regard to such charges of felony as have been usually determined by justices of the peace, under the authority of the bye-laws for the town of Calcutta, by preventing, as far as is consistent with the attainment of justice, any delay of trial, or inconvenience to prosecutors, witnesses and jurymen, by limiting the powers heretofore exercised by such justices, and by subjecting their proceedings upon convictions for felony to more regular control and revision: and whereas it is also expedient to provide the like remedy in cases of assaults committed in certain parts of the River Hooghly, without the limits of the town of Calcutta, as hath been provided in cases of assaults committed within such limits:

1. It is therefore hereby enacted, that it shall not be lawful for any justices or justice of the peace to sentence any person charged with the commission of any felony within the town of Calcutta, or with the possession of stolen property within the same town, by virtue of any bye-law for the town of Calcutta, or by virtue of such bye-law and under Act IV. of 1835, or otherwise than according to the provisions of this Act; and the 6th section of a certain Rule, Ordinance and Regulation, intituled, "A Rule, Ordinance and Regulation for the good Order and civil Government of the Settlement of Fort William in Bengal," passed in Council on the 26th day of July, in the year of our Lord 1814, and registered in the Supreme Court on the 11th day of November in the same year, is hereby repealed.

2. And it is hereby declared and enacted, that all persons charged with the commission of simple larceny within the town of Calcutta may be tried by any justice of the peace for the said town, provided the value of the property which the prisoner is charged with having stolen, does not, according to the belief of such justice, exceed 20 rupees.

3. And it is hereby provided, that such justice of the peace shall not have power to sentence any such person to be imprisoned with or without hard labour for a longer period than six calendar months, or to be transported.

4. And it is hereby provided, that it shall be lawful for any justice of the peace, before whom any person is charged with the commission of any simple larceny, at his discretion, instead of trying such person himself, to commit such person for trial before Her Majesty's Supreme Court of Justice in Calcutta.

5. And it is hereby enacted, that every such justice, after trying any offender charged with the commission of a simple larceny, shall cause his judgment to be drawn up in the following form of words, or in such other form of words to the same effect as the case shall require, that is to say:

"Be it remembered, that on the day of in the year of Our Lord at Calcutta, A. B. is (acquitted, or convicted) before me, J. P., a justice of the peace for the town of Calcutta, on a charge of simple larceny, for that he the said A. B. did feloniously (here specify the alleged offence, and the time and place when and where the same was committed, as the case may be), and I, the said J. P., believe the

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the value of the property stolen to amount to a sum not exceeding 20 rupees, that is to say rupees, and I, the said J. P. adjudge the said A. B. (here state that the prisoner is to be discharged, or the punishment he is to suffer, as the case may be.)

"Given under my hand, the day and year first above named."

(signed) ———

6. And it is hereby enacted, that once at least in every term, and oftener if required by Her Majesty's Supreme Court of Justice at Calcutta, every such justice shall transmit to Her Majesty's said Supreme Court of Justice all judgments, whether of acquittal or conviction passed by him, together with the depositions and examinations of the witnesses and prisoners, there to be kept by the proper officer among the records of the Court.

7. And it is hereby enacted, that upon the trial of any prisoner for simple larceny as aforesaid, every such justice of the peace shall require the witnesses against and on behalf of the prisoner to be sworn, or to make solemn affirmation in cases where an affirmation is by law permitted in the place of an oath, and shall cause the depositions of the witnesses and the examination of the prisoner to be reduced into writing, and every such deposition and examination shall be signed by such justice.

8. And it is hereby enacted, that upon the trial of any person charged with the commission of simple larceny before any such justice of the peace as aforesaid, if any person being duly summoned by such justice shall refuse to attend as a witness, or to give evidence, he shall be liable to be punished by Her Majesty's Supreme Court of Justice at Calcutta, in like manner as if he had refused to attend as a witness or to give evidence before Her Majesty's said Supreme Court of Justice.

9. And it is hereby enacted, that upon any conviction for simple larceny as aforesaid, the justice of the peace before whom any person shall be so committed, shall have power to order the restitution of the property stolen, if forthcoming, to the owner or his representative, and in case of its not being restored pursuant to such order, to impose on any person refusing or neglecting to restore the same, a fine not exceeding 20 rupees, and in default of payment to adjudge the person guilty of such neglect or refusal to be imprisoned for the space of one calendar month, unless the property be sooner restored.

10. And it is hereby enacted, that all persons charged with the commission of any assault or battery on board of any merchant ship employed on sea voyages, in the River Hooghly or the mouths thereof, being part of the territories of the East India Company, may be tried before any such justice of the peace, and on conviction shall be liable to be punished by a fine not exceeding 100 rupees, to be levied and enforced in manner provided by Act II. of 1839. And all the provisions of this Act made in the case of charges of simple larceny, shall, as far as they are applicable, be applied in the case of such charges of assault or battery as aforesaid.

11. And it is hereby declared, that nothing in this Act contained shall be construed to affect the remedy of any person aggrieved by the conviction of any justice of the peace, through the means of the writ of Certiorari.

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No. 3.
On the binding of Apprentices, and Encouragement thereof.

ON THE BINDING OF APPRENTICES, AND THE ENCOURAGEMENT THEREOF (WITH DRAFT OF AN ACT).

Dated the 28th November 1844, with connected Papers.

From *John Pearson*, Esq., Advocate-general, to *W. H. Macnaghten*, Esq., Secretary to the Government of Bengal; dated Fort William, 5 December 1834.

Bengal Proceedings. 10 Dec. 1834. No. 69.

Sir,

I HAVE the honour to acknowledge the receipt of a letter from Mr. Macsween, respecting the case of an apprentice committed by Mr. M'Farlan and Mr. Hoseason to prison.

2. In the case referred to, the point taken was only a preliminary objection, and did not affect the principle of the law.

But on the best consideration that I can give the subject, I am of opinion that the statutes relative to apprentices, and which alone subject them to punishment by the magistrates, any more than any other servants, are not applicable to Calcutta.

3. I cannot be aware of the degree of importance which attaches to this subject; on such point the magistrates must have much better means of information than myself, both as to the evil which exists, and as to the remedy which may be required. But I should recommend that hereafter they do not in similar cases proceed to imprison the offender.

I have, &c.

Fort William, 5 December 1834. (signed) *John Pearson*, Advocate-general.

EXTRACT from a Despatch addressed by the Government of India to the Honourable the Court of Directors, in the Legislative Department (No. 18); dated 14 September 1843, paras. 122 and 123.

Legis. Cons. 6 Jan. 1843. No. 23 to 25.

122. Mr. Fulton, late officiating magistrate at Calcutta, had been induced to prepare the draft of an Act* for the binding of apprentices, in consequence of several complaints which had been made to him of apprentices leaving their masters, and from the anxiety which the patrons of schools at which the apprentices were educated had shown for the interference of the legislature. The English laws on the subject do not extend to India, and tradesmen hesitate to employ apprentices, knowing that they can have no legal hold over them.

123. We forwarded a copy of Mr. Fulton's letter, and of the draft Act, for the opinion of the Law Commissioners.

From *J. W. Fulton*, Esq., to The Honourable *W. W. Bird*, Deputy-governor of Bengal, and President of the Council; dated 12 December 1842.

Legis. Cons. 6 Jan. 1843. No. 23.

Sir,

I HAVE the honour to enclose, for your consideration, the draft of an Act relating to apprentices, which I have been induced to draw up in consequence of your having advised me to lay the matter before Government.

Since

* Proposed law for the binding of Apprentices, and for the encouragement thereof.

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On the binding of Apprentices, and Encouragement thereof.

Since you did me the honour to appoint me to a place upon the magisterial bench, several applications have been made to me in my official capacity by Calcutta shopkeepers, requesting my assistance to enable them to keep their apprentices in order; they have stated to me that they have, upon taking boys from the various schools in Calcutta, been in the habit of having a formal deed drawn up, for the purpose of being enabled to hold such deed in terrorem over their apprentices, though fully aware that such deeds are inoperative, and that no compulsory measures can be adopted to enforce obedience. One evil complained of is, that as soon as a boy has learned his business, and the master has taught him to be useful, the youth leaves his employer's house, and often betrays the confidence which has been reposed in him. The shopkeepers are therefore anxious for an Act, in order that a reciprocity may be established, and that the master may have a few years' gratuitous service from the apprentice, in return for the expense and trouble he has had in teaching the boy his business. The patron of the school at which the boy has been educated is also anxious for the interference of the legislature, in order that he may have some place to send the boy to, in which he knows the boy will be taken care of after he has left the school, instead of being turned adrift upon the world at an immature period of life, whereas at present he complains that the shopkeepers hesitate about employing boys, in consequence of knowing that they have no hold over their apprentices, and that when the boy attains the age at which he is obliged by the regulations to leave the school, the schoolmaster often, especially in the case of orphans, does not know what to do with him.

For the above reasons, I submit that some law should be in force, regulating the relationship of master and apprentice. The English statutes upon the subject are very numerous, but I submit that not one of these statutes extends to India, being wholly from their terms of a local nature; for instance, the fines imposed by many of them upon offenders are set forth in British currency, and in others, parishes and corporations are alluded to. The Act which I have the honour to enclose, is based upon the several Acts in force in England, but principally upon the statute passed upon the subject in the reign of Queen Elizabeth. There are many provisions in the draft which I have no doubt can be improved upon, should you think the subject worthy of consideration; and, in conclusion, I need scarcely add, that any further explanation upon the matter which lies within my power is perfectly at your command.

I have, &c.

Calcutta, 12 December 1842. (signed) *J. W. Fulton.*

Legis. Cons. 6 Jan. 1843. No. 24.

AN ACT concerning the Binding of Apprentices, and for the Encouragement thereof.

Description of Masters.

IT is hereby enacted, that every person, being an householder and 24 years old at the least, dwelling or inhabiting, or who shall dwell or inhabit in the city of Calcutta, and using any art, mystery, trade or manual occupation there, shall and may, at any time after the passing of this Act, have and retain any person or persons whatsoever coming under the description hereinafter mentioned, to serve and be bound as an apprentice or apprentices, for the purpose of learning such art, mystery, trade or manual occupation respectively.

Description of persons who may bind Apprentices; a license required from Two Justices.

2. And it is hereby enacted, that any person or persons who shall or may, from time to time, obtain a license or permission from any two of Her Majesty's justices of the peace for the city of Calcutta, shall and may be entitled, during the continuance of such license or permission, and until the same shall be cancelled or annulled, to bind out any person or persons whatsoever coming under the description in such license or permission contained, to serve an apprenticeship to any such person or persons as aforesaid, who are hereinbefore empowered to have and retain apprentices, and every apprentice so bounden shall be compellable to serve.

Apprenticeships to cease on Apprentice attaining the age of 21. In England the age is 24.

3. Provided always, and be it enacted, that no person shall, by force or colour of this Act, be bounden to serve any apprenticeship other than such as be under the age of 21 years; and that the apprenticeship of any person or persons who may or shall have been bounden to serve an apprenticeship as aforesaid, shall cease

cease and terminate upon such person or persons respectively attaining the age of 21 years.

The contract must be evidenced by a writing.

4. And it is hereby enacted, that the terms of every contract of apprenticeship shall be reduced to writing, that every such writing respectively shall be signed by the apprentice, by the person or persons to whom such apprentice is bound, and by the person or persons who have a license or permission to bind such apprentice as aforesaid, and every such writing shall recite the license or permission under which the person or persons binding out such apprentice acts or act, and shall also specify the art, mystery, trade or manual occupation, for the purpose of learning which such apprentice shall be bounden to serve.

And must be registered at the police office.

5. And it is hereby further enacted, that no such contract of apprenticeship shall be complete or valid, unless the same shall be registered in the office of the chief magistrate of the city of Calcutta, within one month after the same shall have been signed as aforesaid, such chief magistrate being hereby empowered to take a fee of five rupees for the registering thereof, and in his discretion to refuse to register the same.

No Apprenticeship for a shorter period than five years.

In England seven years is the minimum.

6. And it is hereby enacted, that no person shall be bound to serve an apprenticeship (excepting as hereinafter mentioned) for a shorter period than five years at the least, and that, upon the expiration of any term of apprenticeship, no master or mistress shall be at liberty to put away any such apprentice, and that no such apprentice shall depart from his said master or mistress, at the end of his or her term of apprenticeship, without one month's warning, given before the time of such putting away or departure, as the case may be, either by the said master or mistress, or by the said apprentice.

Upon death of Master before expiration of Apprenticeship, a proportionate part of fee to be returned to Apprentice.

7. And it is hereby enacted, that in the event of the death of any master or mistress of any apprentice, bound under and by virtue of the Act, before the expiration of the term for which such apprentice shall have been bound to serve, that a proportionate part of the premium or fee paid to such master or mistress for taking such apprentice to serve, shall be returned to the person or persons respectively who shall have paid the same to such master or mistress so dying as aforesaid, and the same shall be employed by such person or persons respectively in and towards the binding out of such apprentice to some other person or persons using the same art, mystery, trade or manual occupation respectively, as the master or mistress so dying as aforesaid.

Apprentice may be bound to a second Master for remainder of period unexpired on death of Master.

8. And it is hereby enacted, that any apprentice whose master or mistress shall die before the expiration of the term for which such apprentice shall have been bound to serve, may be bound to serve another apprenticeship for any period not less than the unexpired portion of the term for which such apprentice shall have been bound to serve to such master or mistress so dying as aforesaid.

Apprenticeship contract may be dissolved by Justices.

9. And it is hereby enacted, that any one or more of Her Majesty's justices of the peace in and for the city of Calcutta, may, at any time before the expiration of the term for which any apprentice shall have been bound under and by virtue of this Act, discharge such apprentice, and his or her master, from all and every the liabilities and responsibilities incurred by them respectively by such binding out as aforesaid, and wholly terminate and put an end to such apprenticeship as aforesaid.

Duties of Master and Apprentice.

10. And it is hereby enacted, that every master or mistress, to whom an apprentice shall be bound under and by virtue of this Act, shall be respectively required to lodge, feed, clothe and maintain every such apprentice during the period of his or her apprenticeship, and that every apprentice shall be required to serve and obey his or her master or mistress in all and every reasonable manner.

Upon complaint against Master, Justice to issue a summons, provided complaint is made within three months.

11. And it is hereby enacted, that if upon complaint made before any one or more of Her Majesty's justices of the peace in and for the city of Calcutta, it shall appear to such justice that any master or mistress to whom an apprentice shall be bound under and by virtue of this Act, shall have misused or evil treated any such apprentice at any time within three months before such complaint shall be made, such justice shall direct a summons to issue, calling upon such master or mistress to appear before him, in order that the cause of such complaint may be inquired into.

12. Provided

And to proceed ex-parte on default.

12. Provided always, that if such master or mistress shall not appear before such justice upon the day appointed in such summons, and it shall appear upon oath, or solemn affirmation in cases where a solemn affirmation is by law permitted in place of an oath, made before such justice, that such summons has been served personally upon such master or mistress, or left at the usual place of residence of such master or mistress respectively, then in such case it shall and may be lawful for such justice, and he is hereby directed to examine into such complaint ex-parte, and to determine whether such master or mistress be guilty of the charge or not.

On conviction to punish with fine not exceeding 200 Companies' Rupees, or to commit to gaol for a period not exceeding three months.

13. And it is hereby enacted, that every such justice of the peace shall have power, upon conviction of any master or mistress upon a charge of having misused or evil treated any apprentice or apprentices bound to serve such master or mistress under and by virtue of this Act, to inflict a fine not exceeding 200 rupees at the most, and in default of payment thereof to commit such master or mistress to the common gaol of Calcutta, for any period not exceeding three calendar months, and if such conviction shall have taken place after an ex-parte examination, the said justice is hereby empowered to issue his warrant under his hand and seal, for the purpose of having such offender brought before him, in order that the said penalty may be enforced, and in default of payment thereof that the said offender may be committed to prison as aforesaid.

Upon complaint against Apprentice, Justice to issue warrant, provided complaint is made within one month after offence;

and upon conviction to punish with imprisonment in house of correction for not exceeding one month, and to order a whipping (if a male).

14. And it is hereby enacted, that if any master or mistress shall make complaint upon oath, or solemn affirmation in cases where a solemn affirmation is by law permitted in the place of an oath, before any one of Her Majesty's justices of the peace in and for the town of Calcutta, that any apprentice bound under and by virtue of this Act, has been guilty of disobedience, misconduct, insolence or neglect of duty, such justice is hereby empowered in his discretion to issue his warrant under his hand and seal in the first instance, and before summons, for the purpose of having such apprentice brought before him, in order that such complaint may be inquired into; and if to such justice it shall appear that the said apprentice has been guilty of disobedience, misconduct, insolence or neglect of duty, at any time within one month before such complaint shall have been made, such justice is hereby empowered to send such apprentice to the house of correction for any period not exceeding one calendar month, to be there kept to hard labour, and whilst there (if a male) to be once, twice or thrice privately whipped, if such justice shall so order and direct.

(No. 1.)

Legis. Cons. 6 Jan, 1843. No. 25.

From *F. J. Halliday*, Esq., Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq., Secretary to the Indian Law Commissioners; dated 6 January 1843.

Sir,

I AM directed by the honourable the President in Council to transmit to you the accompanying copy of a letter from Mr. J. W. Fulton, of the 12th ultimo, together with copy of a draft Act for the binding of apprentices, and for the encouragement thereof, and to request that the Law Commissioners will favour the Supreme Government with their opinion on its provisions.

I have, &c.

6 January 1843.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

(No. 50.)

Legis. Cons. 14 Sept. 1844. No. 12.

From *T. R. Davidson*, Esq., Officiating Secretary to the Government of India, Home Department, to the Indian Law Commissioners; dated 14 September 1844.

Gentlemen,

WITH reference to Mr. Secretary Halliday's letter (No. 1.), dated 6th January 1843, and its enclosures, I am directed to request that you will report, for the information

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information of the Governor-general in Council, what has been done on the subject of the proposed enactment for the binding of apprentices, and for the encouragement thereof, a draft of which accompanied the above reference.

I have, &c.

14 September 1844. (signed) *T. R. Davidson*,
Officiating Secretary to the Government of India.

(No. 24.)

From The Indian Law Commissioners to The Right Honourable Sir *Henry Hardinge*, G.C.B., Governor-general of India in Council; dated 28 November 1844.

Unrecorded.

We have the honour to report upon the subject referred to us by Mr. Secretary Halliday's letter, dated the 6th January 1843.

2. Mr. Halliday's letter contained a copy of one from Mr. Fulton, then officiating as a magistrate at Calcutta, with the draft of an Act "concerning the binding of Apprentices," which he had prepared in consequence of representations made to him, showing the necessity of some provisions on this subject, corresponding with those of the English statute law, assuming that the English law of apprenticeship does not extend to India.*

3. Mr. Fulton explained, that the draft was based upon the Acts in force in England, principally upon the Statute of Elizabeth. Its object was to regulate the relationship between master and apprentice, securing on the one hand to the master the means of enforcing the obligations of the apprentice, and on the other hand protecting the apprentice from ill-treatment by the master. It was intended to be in force in the city of Calcutta only, and to be confined to apprenticeship with persons being householders, and using any art, mystery, trade or manual occupation therein. The advantage expected was, that tradesmen, having the services of their apprentices secured to them, would be more disposed to engage young men on the condition of teaching them their craft, and thus qualifying them, after a time, to provide for themselves, and that hereby opportunities would be afforded for the advantageous employment of the youths growing up at the orphan establishments and other like institutions in Calcutta, which now find a difficulty in disposing of them.

4. On considering the subject, it appeared to us proper to inquire first, whether the inconvenience supposed to arise from the want of a law, was of such importance as to require the interference of the legislature to remedy it; and, secondly, whether, if it should be thought advisable for the legislature to interfere, the proposed enactment should not be more extensive than the draft intended, and particularly whether it might not be expedient to provide for binding apprentices to persons engaged in business in the provinces, and also to the masters or owners of sea-going vessels, and vessels employed in internal navigation, according to the rules of the English statutes in regard to parish boys, especially with a view of relieving the orphan establishments.

5. In order to obtain the desired information on these points, we entered into communication with the Chamber of Commerce, and the Trade Association of Calcutta, the Superintendent of Marine, the Comptroller of Government steamers and the Master Attendant, and with the Managers and Governors of the institutions noted in the margin.

La Martiniere
Upper and Lower Orphan Asylums
and the Free-school.

6. The Chamber of Commerce and the Trade Association agree in representing that a law of the nature proposed is much required, and would have a very beneficial operation.

7. The Trade Association had the subject under consideration in 1835, when they communicated with the chief magistrate, Mr. M'Farlan, upon it, and they submit a letter from that officer expressing an opinion to the same effect as that which is now given by the association.

8. The Managers of the Orphan Schools say, that if not indispensably requisite, the proposed law is extremely desirable. They intimate that they have not practically

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* *Vide* opinion of Mr. Pearson, Advocate-general, in letter to Secretary to Government of Bengal, dated 5th December 1834.

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practically found difficulty in procuring employment for their boys as apprentices to tradesmen; but that, on the other hand, they have occasionally felt an unwillingness to apprentice boys, from their conviction that the law does not give them power to protect those who are ill used. They deem it probable, that under the proposed law, they would find greater facilities in procuring for their wards higher descriptions of employment, and a better chance of rising in the world.

9. The Governors of the Free-school state, that for a long time they have found difficulty in apprenticing their wards, from the want of a law to secure to masters the services of apprentices.

10. The Managers of the Orphan Schools are of opinion, that the proposed Act should be extended so as to provide for binding apprentices to persons engaged in business in the provinces, and to the masters or owners of ships, and they give instances from their own experience to prove that some regulation to this effect is necessary.

11. It is stated, that in 1839 four boys of the Lower Orphan School were placed on board Her Majesty's ship "Conway," under an engagement from the commander, Captain Bethune, that so far as he had the power, they should be kept in Her Majesty's service until old enough to choose a profession. This experiment was successful, so far as was known to the managers. On the return of the "Conway" from China, the boys visited the school several times, and were observed to be in excellent health, with a fine manly appearance, and seemed to be much attached to the service. They appear to have gone to England in the "Conway," since which they have not been heard of; Captain Bethune looked to their eventual employment as able-bodied seamen in the royal navy.

12. The Master Attendant says, that if a system of apprenticing boys, such as are brought up at the orphan establishments, to the sea service could be established, it would tend to supply a want very much felt by the shipping of this country, which is badly provided with a class of men fitted to be steersmen and gunners. He thinks, however, that there would be difficulty in the way of establishing such a system, chiefly because the boys employed in country ships would not be so well fed, nor have the same comforts as at school, which at the outset would render the service disagreeable to them. Could this difficulty be overcome, the service would eventually be better for the apprentices who qualified themselves for the duties of sea cunnies and gunners, than that which is open to the boys of the Lower Orphan Establishments in the army (usually employed as drummers), the pay of sea cunnies being from 12 to 16 rupees, and the pay of a gunner from 25 to 40, with the ship's allowance of food.

13. Captain Johnston, Comptroller of the Government steamers, while he concurs with the Master Attendant in thinking the object desirable, agrees with him also in anticipating difficulties, and to illustrate his views on this point, he mentions an experiment made by the late Mr. Kyd to train boys of the class in question to serve as mariners, which failed, from the dislike of the boys to the duties they were required to perform, though under circumstances more favourable than they would meet with in sea-going country ships.

14. Captain Johnston thinks it would be feasible to have two or more apprentices attached to each of the Government steamers, both inland and sea-going, to be interchanged occasionally.

15. The Superintendent of Marine states, that, under existing rules, the "Amherst" is the only sailing vessel belonging to Government, in which apprentices can be received. He thinks that two or three apprentices might be advantageously received on board of the "Amherst," where they would have as good opportunity perhaps as could be wished, for becoming either good common seamen or officers, according to their abilities and conduct, and he is of opinion that if the Court of Directors would permit apprentices brought forward in this vessel, after due service and proper testimonies from the commander, to have some claim to fill vacancies in the pilot service, such an arrangement would be productive of much advantage to that service. The pilot vessels and other vessels connected with the navigation of the river, he says, could not, under the present rules, afford any opening for the employment of apprentices of the class intended, but he appears to think that it would be an advantage if the lads sent out from England for the pilot service, were bound as apprentices.

16. We observe that in a Rule, Ordinance and Regulation for the Settlement of Fort William in Bengal, passed by the Governor-general in Council on the

21st

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21st June 1816, regarding the wages of seafaring men belonging to the port of Calcutta, and the providing of ships and vessels navigating to and from the said port, with seafaring men, provision was made,* among other things, for binding out any boys descended from European fathers and mothers, who should be chargeable to and supported by any of the orphan or charitable schools in Calcutta, or whose parents should be indebted to charity for their own support, and unable to support their said children, to be apprentices to the sea service. This Regulation was repealed on the 28th July 1825.

* Sect. 13 & 14.

17. A new Regulation, containing general rules for Lascars and other Asiatic seamen in vessels trading under the Act 4 Geo. 4, c. 80, was passed by the Governor-general in Council, in pursuance of the said Act, on the 31st January 1828, but no provision has been made since the repeal of the Regulation of 1816, for binding apprentices to the sea service.

18. We do not know whether it was an advised resolution of the Government to repeal the rules of 1816 on this subject, without any substitution for them. We are inclined rather to think that on receiving the Act 4 Geo. 4, c. 80, by which the Government was charged with the duty of making a general Regulation for Lascars and other Asiatic sailors employed in vessels trading under the Act, it was resolved at once, as a preliminary measure, to repeal all the existing Regulations containing rules relating to seafaring men, including of course the Regulation in question, without adverting to the particular provisions it contained relative to apprentices. The new Regulation being confined to the objects indicated in the Act, afforded no room for such provisions; and probably the attention of Government was not again called to the subject.

19. We are not aware that the Government of India has ever legislated on the subject of apprenticeship in any other line than that of the sea service.

20. The Regulation of 1816, regarding sea apprentices, applied only to boys descended from European fathers and mothers. We apprehend that the Act proposed by Mr. Fulton, contemplated not only children of European fathers and mothers, but generally young persons of that description, and also such as are now usually denominated East Indians, brought up according to European manners, and in the Christain religion, not however Hindoos and Mahomedans.

21. In general the communications we have received go upon the supposition that Hindoos and Mahomedans are not intended to be provided for by the proposed Act, and the suggestions contained in them are framed accordingly. But the members of the Trade Association have proposed that the law be adapted for Hindoos and Mahomedans as well as Christians.

22. We have no information to lead us to conclude that a law of apprenticeship is requisite with regard to Hindoos and Mahomedans, and we are not prepared to recommend the application of such a system to them.

23. With respect to the other classes, it appears to be the general opinion that it is expedient to encourage and promote the system of apprenticeship, which already obtains partially, as a good means for instructing young people, especially orphans and others brought up at the various charitable institutions, whose parents are unable to provide for them in arts and trades, and leading to their permanent settlement in employments in which they may find a livelihood, and become useful members of the community; and that it is owing to the want of a law to bind masters and apprentices respectively to their engagements, that this system is not so much followed here as in the circumstances of those classes is desirable.

24. We concur in the general opinion, that it is expedient, as respects young persons of the classes in question, to promote and extend the system of apprenticeship, "conceiving of it as calculated to operate in a certain degree as a source of instruction, and yet in a higher degree in the still more important function of a security for good behaviour." We regard it as supplementary to school education, a means of after discipline and training, as well as a practical method of initiation in arts and trades which require skill.

25. It has long been considered an object of high importance to induce the East Indian youth to apply themselves to trades, instead of seeking the employment of clerks in offices, to which they have hitherto been almost exclusively addicted. For this end every facility should be afforded to their entering into employments of the nature contemplated, in a way in which they may not only acquire the necessary skill, but, in attaining proficiency and expertness, may become habituated

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tuated to industry, and learn the value of that steady and diligent attention to business which will most surely lead to success.

26. In England the necessity of apprenticeship, as a means of access to particular trades, has been, in general, abolished, and a perfect liberty established in this respect; but it appears that apprenticeship, though no longer absolutely necessary as before, continues to be the usual mode of learning a trade, and as such is recognized by law.

27. Still, however, the managers of the poor in England have power to bind the children of paupers as apprentices, and to compel the persons to whom they are assigned to take and keep them, or to pay for their being kept by others. Parish apprentices may also be bound to the sea service, and masters and owners of ships are obliged to take one or more, according to the tonnage of their vessels. So likewise the Regulation of 1816, above-mentioned, obliged the owners of vessels belonging to the port of Calcutta, to take apprentices.

28. The attention of the Poor Law Commissioners having been directed to the system of compulsory apprenticeship, as practised in England in the case of poor children, it has been found to be liable to serious objections. These appear to be referable chiefly to the compulsory nature of the system.

29. It is said, that the mode of allotting the children was not calculated to produce the result proposed to be accomplished by the system, since the children were allotted to rate-payers, whether able to lodge, maintain or clothe them with comfort or not; and whether they had the means of employing the children or not, in other words, without any regard to the object which it was alleged the directors and acting guardians had in view; viz. the instruction of the children in a useful trade or calling. Persons unwilling to receive children assigned to them, had the option of paying a fine towards the charge of apprenticing them elsewhere. In such cases it is said the misfortunes of the children were increased. The premiums offered with them proved an irresistible temptation to needy persons to apply for an apprentice, whether they wanted the services of the apprentice or not; and whether they could instruct him in any useful calling or not. Their sole object often was to secure the premium.

30. The system of compulsory apprenticeship having been found to work ill, it is proposed to discontinue it, and where the guardians of the poor are necessitated to interfere, as in the case of children without natural guardians, to substitute contracts of hiring and service without premium, for indentures of apprenticeship.

31. We contemplate no constraint, no forcing of apprentices upon persons engaged in trade or others; nor the interference of public bodies in binding apprentices, where the parents of children, or others their natural guardians, are in a condition to do what is necessary in this respect.

32. It is proposed by the Poor Law Commissioners to make arrangements for the industrial education of the children of the poor in district schools, in which they are to be practically trained in workshops for handicraft trades, and to be instructed and practised in the duties of seamen, &c., with the view of qualifying them to be of immediate use in those lines, and thus rendering them eligible for employment on a contract of hire, by master mechanics, masters of ships, &c. But such arrangements seem to be hardly practicable here at present, and the system of apprenticeship appears, under our actual circumstances, to be the only feasible resource.

33. We consider it desirable to render this mode of access to trades, &c. as readily available here as in England, and it appears to us, that by the help of some legal provisions to facilitate the working of the system, so that it may be reciprocally advantageous to the parties, this object will probably be attained.

34. "The master of an apprentice is at the same time master and tutor. Tutor for the art which he teaches, master as to the profit which he derives from him. The work that the apprentice does after the period at which the produce of his labour is worth more than what it costs to develop his talent, is the salary or reward of the master for his former pains and expenses." This must be secured to the master by law. But the reward should be proportioned to the difficulty of the art; the gratuitous services of the apprentice should not be given to the master for the same period of time when the art to be learned is easy as when it is difficult; the same return should not be made for instruction which, without much trouble, may be afforded in the course of a year or two, as for that which must be continued during a series of years. The settlement of

terms

terms of apprenticeship, therefore, should be left to private adjustment according to circumstances, subject to certain general rules and limitations. All that appears to us to be requisite in a law of apprenticeship, is to lay down such general rules and limitations, and requiring the particulars of every contract to be set forth in a written agreement, to add some easy provisions for the summary enforcement of the engagements of the respective parties.

35. We submit the draft of an Act prepared according to these views.

36. Although we do not recommend the system of apprenticeship as adapted to Hindoos and Mahomedans, and it is declared in the preamble that the Act is intended to apply particularly to the children of persons following European manners and usages, we have thought it proper not to exclude any persons from availing themselves of it, deeming it advisable to avoid as much as possible the appearance of class legislation. In the general terms of the enactment proposed in section 1, we have followed the statute 54 Geo. 3, c. 96.

37. It will be observed, that we have provided in section 6 for binding apprentices to the sea service, both to the owners of private vessels, and for employment in vessels belonging to the East India Company.

38. The English statutes provide for apprentices being bound to the owners or masters of private vessels; but, considering the connexion of a master with a vessel to be very liable to interrupture, we have thought it better that the apprentice should always be bound to the owner, and that the master should be regarded as his agent. In the case of apprentices to be employed in vessels of the East India Company, they are to be bound to the Master Attendant, or other officer appointed to represent the Company in this behalf at the port at which they enter.

39. The general enactment in section 1 will admit of apprentices being bound to serve in vessels employed in river navigation in the Company's territories. It will also admit of apprentices being bound to public officers, for employment in the public service. For such cases there is a special provision in section 5, to hold the apprentice bound to the successor of the officer with whom the contract shall have been made, in the event of the resignation or removal of the latter.

40. The restrictions proposed are, that no person shall be bound as an apprentice under the age of 10, nor, if above 13, without his own consent, nor for a term to extend beyond the age of 21, nor to serve at any place out of the Company's territories. The latter provision is meant to prevent the permanent location of an apprentice at a place where the Act could not be enforced. Sect. 3. Sect. 4.

41. Leaving the term of apprenticeship and all the conditions to be settled by the parties, the draft requires that they shall be distinctly stated in a written contract to be signed by the parties, and registered in a public office, and that any modification of the original conditions which may be subsequently agreed upon shall be certified on the contract, and registered in like manner. Sect. 8. Sect. 9. Sect. 10, 11, 12. Sect. 13.

42. It is provided that a contract of apprenticeship may be determined, and also that an apprentice may be assigned to a new master, by agreement of parties, which agreement is to be registered. Sect. 16. Sect. 17.

43. A contract of apprenticeship is to be considered as determined by the death, or by the bankruptcy or insolvency of the master, unless, in the first case, the executors or administrators of the deceased, or some member of his family, agree with the other parties to the contract to retain the apprentice; but when the contract shall be determined by any such event, if any premium shall have been paid on the binding of the apprentice, the estate of the deceased or of the insolvent, as the case may be, will be liable for a proportionate part thereof. And it is provided that an apprentice shall always be entitled to maintenance for three months after the decease of his master, if it shall happen before the expiration of the term of apprenticeship. Sect. 25–27.

44. Magistrates are empowered to hear complaints of apprentices against their masters or their agents, as the case may be, of misusage or breach of contract, and upon proof thereof to impose a fine upon the offender not exceeding 200 rupees, to be levied by distraint and sale of the goods of the offender, or if the offender shall not be the master, of the goods of the master also, as responsible for the agent under whom he shall have placed the apprentice; and if the fine is not paid, and cannot be levied by distress, to commit the offender to prison for a period not exceeding two months. Magistrates are further empowered in such cases to discharge the apprentice, and to order a refund of a proportionate part of the premium which shall have been paid on his account, and the levy thereof, if necessary, Sect. 18. Sect. 19.

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necessary, by distress and sale of the goods of the master, and failing the recovery thereof, to commit the master to prison for a period not exceeding two months.

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45. On the other hand, magistrates are empowered to punish apprentices on the complaint of their masters. The punishments we propose are imprisonment and hard labour for a period not exceeding three months, for which may be substituted solitary confinement in any suitable place in or out of prison, for a period not exceeding three weeks, and in the case of boys of tender years, corporal punishment to the extent authorized by section 2, Act III. of 1844; or close confinement in the house of the master, or on board the vessel to which the apprentice may belong, with a short allowance of food, for a period not exceeding one month.

46. It is held, that by the law of England a master may correct and chastise his apprentice for neglect or other misbehaviour; and by statute, magistrates are empowered to cause defaulting or offending apprentices "to be corrected," besides being kept in confinement and held to hard labour, by which it is understood that they may inflict upon such apprentices corporal punishment at their discretion. We have thought it proper to limit the power of the magistrate in this respect as above defined. We are not aware that solitary confinement is prescribed by any English statute as a punishment for offences of this sort, but it appears to us to be very suitable to such cases, as it saves the offender from the contamination which can scarcely be avoided in mixing with other prisoners, while it is likely to be very efficacious. This mode of punishment was recommended for juvenile offenders by Mr. Starkie, one of the Commissioners for Inquiry into the state of the Criminal Law, in his evidence before the Lords' Committee in 1838, for reasons which appear to us to apply exactly to the cases under consideration. "I conceive," said he, "that the most serious punishment, even as regards hardened offenders, consists in depriving them of their ordinary gratifications and intercourse with those of their own habits and mode of life. When such indulgences as society are allowed in prison, a great deal of the effect of imprisonment is done away with, indeed it almost ceases to be a punishment. There is nothing they feel so much, I am persuaded, as the prevention of their accustomed gratifications."

Minute of Evidence before Lords' Committee, on the Third Report on Criminal Law, 1838, p. 8.

47. A strong reason for preferring solitary confinement as a punishment for apprentices is, that from the shorter duration of it the master is put to less inconvenience by his absence from work.

48. Considering the unfitness of gaols, in the interior particularly, for the confinement of apprentices of the classes to which the proposed Act is meant to apply, more especially females, we have thought it proper to make a provision authorizing a magistrate, at his discretion, to sentence an offending apprentice to be confined for a short period in the house of his master, or on board of the vessel to which he belongs, and during such confinement to suffer a privation of food. This provision seems to be necessary for the purpose of enforcing discipline, and with the check which will be in the power of the magistrate, of requiring the apprentice to be brought before him at the termination of his confinement, it does not appear to us that it is likely to be abused.

49. Section 23 authorizes magistrates to dissolve a contract of apprenticeship, on proof of wilful and continual misconduct on the part of apprentice.

50. By section 24, the period for preferring complaints by masters against their apprentices is limited to one month, and by apprentices against their masters to three months. We think it necessary to make this difference in favour of apprentices, on account of their youth and inexperience, which will generally prevent them from seeking redress of themselves for injuries done to them by their masters, and to afford time to their friends to interfere.

51. By section 30, for the purpose of this Act British subjects out of the jurisdiction of Her Majesty's courts are made amenable to the magistrates of the East India Company, and by section 31, an appeal is allowed to the courts of session.

We submit this our Report for the consideration of the Right honourable the Governor-general in Council.

(signed) *C. H. Cameron.*
D. Eliott.

DRAFT

No. 3.
On the binding of Apprentices, and Encouragement thereof.

Draft of an Act concerning the Binding of Apprentices.

Whereas it is expedient to facilitate the setting out, and instruction of the children of persons inhabitants in the territories under the Government of the East India Company, following European manners and usages, particularly orphans and destitute children brought up by public charities, in arts, trades, crafts and employments, by which when they come to mature age, they may be enabled to gain a livelihood: And whereas it is considered proper, for this end, to promote the system of apprenticeship, which has partially obtained hitherto, by legal provisions, calculated to render the contract between master and apprentice effectual for the reciprocal benefit of the parties:

1. It is hereby enacted, that it shall be lawful for any person inhabiting in any part of the territories under the Government of the East India Company, to take, retain or become an apprentice.

2. Provided, that no person shall be bound as an apprentice except by his parent or guardian; and it is hereby declared, that an orphan or destitute person brought up by any public charity, may be bound by the governors, directors or managers thereof, as his guardians, for this purpose.

3. And provided that no person shall be bound as an apprentice who is under the age of 10 years, and that no person above the age of 13 years shall be so bound without his own consent, and that no person shall be so bound for a term to extend beyond the time at which he will attain the age of 21 years.

4. And provided that no person shall be bound to serve as an apprentice out of the territories of the East India Company, except on board a ship or vessel.

5. And it is hereby enacted, that when any person shall be bound as an apprentice to any officer of Government as such, for employment in the public service, in the event of the resignation or removal of such officer, the apprentice shall be considered as bound in the same manner to his successor.

6. And it is hereby enacted, that any boy being of the age of 13 years, may be bound as an apprentice in the sea service to any of Her Majesty's subjects, being the owner or owners of any registered ship or vessel belonging to and trading from any port in the said territories, declared to be a registering port under Act X. of 1841, to be employed in any such ship or vessel the property of such person, and while so employed, to be instructed in the craft and duties of a seaman, provided that the master of such ship or vessel shall be a British subject; or for sea service in any ship or vessel of the East India Company belonging to any such port, commanded by a British subject, in which case the contract shall be made with the Master Attendant at such port, or any officer appointed to represent the East India Company in this behalf, who shall appoint the ship or vessel in which such apprentice is to serve from time to time.

7. And it is hereby enacted, that the master or commander of any ship or vessel in which an apprentice bound under the last section, shall be appointed to serve by the party to whom he is bound, shall be deemed the agent of such party for the purposes of this Act.

8. And it is hereby enacted, that every contract of apprenticeship shall be reduced to writing, which writing shall set forth distinctly the conditions agreed upon, particularly specify the age of the apprentice, and the term for which he is bound, what he is to be taught, where and how he is to be employed, and whether, under the immediate superintendence and direction of the Master, or of an agent for him, and what provision is to be made for his maintenance, lodging and clothing, especially whether he is to be lodged and boarded in the house, and as a member of the family of the master, or of his agent or otherwise, or if the apprentice shall be bound to serve in a sea-going vessel, or in a vessel employed in river navigation, where his berth is to be on board, and how and with whom he is to mess, and what provisions, clothing and bedding are to be supplied to him, and how he is to be provided for when he is not on board.

9. And it is hereby enacted, that every such contract shall be in duplicate, and that each copy shall be signed by the person to whom the apprentice is bound, and by the person or persons by whom he is bound, and by the apprentice himself when he is above the age of 13 years, provided that when the apprentice is bound by the governors, directors or managers of a public charity, the signature

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ture of two of them, or of their secretary or officer on their behalf, shall be sufficient.

10. And it is hereby enacted, that no such contract shall be valid unless it be executed in the manner aforesaid, nor until it has been registered in the office of the chief magistrate of the place or district where it has been executed, or if the apprentice shall be bound to the sea service, in the office of the person appointed under Act X. of 1841, to make registry of ships and vessels at the port where the apprentice is to enter on the said service.

11. And it is hereby enacted, that when the apprentice is bound to serve at some other place than that where the contract has been executed, out of the jurisdiction of the magistrate in whose office it has been registered, the master, within one month after the arrival of the apprentice at such place, by himself or by his agent under whom the apprentice is to be employed, according to the contract, shall apply to the chief magistrate of the district to register the contract in his office.

12. And it is hereby enacted, that if the master shall fail to register the contract within one month, as directed in the last section, he shall not be entitled to apply to a magistrate to take cognizance of any cause of complaint he may have against the apprentice, in the manner herinafter provided, but it shall nevertheless be competent to any magistrate to take cognizance of complaints against the master, on application made to him on behalf of the apprentice.

13. And it is hereby enacted, that when by the contract of apprenticeship the apprentice is bound to serve at a certain place or in a certain district, or in a certain trade or business, and the master desires to remove him to some other place or district, or to employ him in some other trade or business, or in any other way than as stipulated in the contract, he shall be at liberty to do so with the consent of the person or persons by whom the apprentice was bound, and with the consent of the apprentice himself, if he is above the age of 13 years, provided that the alterations agreed to shall be expressed in writing on each copy of the contract, with the signature of the proper parties, according to section 8, and shall be registered in the office of the chief magistrate of the place or district where the apprentice shall have been employed.

14. And it is hereby enacted, that when an apprentice shall be removed under the last section, the provision of section 11 and section 12 shall be applicable.

15. And it is hereby enacted, that in the case of a sea apprentice, when the contract of apprenticeship is registered as above directed, the name and description of the vessel in which such apprentice is to serve, and the name and description of the master or commander thereof, as a British subject, shall be certified on each copy of the contract, with the signature of the master of the apprentice, and shall be entered in the book of registry; and that if the apprentice shall be transferred to any other vessel, the transfer shall be noted and registered in like manner.

16. And it is hereby enacted, that a contract of apprenticeship may be determined at any time before the expiration of the term specified in it, by the consent of all the parties, provided that such consent shall be certified in writing on each copy of the contract, with the signature of all the parties, according to section 9, and shall be registered in the office where the contract was first registered, or in that of the chief magistrate of the place or district where the apprentice shall have been last employed.

17. And it is hereby enacted, that the master of any apprentice bound under this Act may, with the consent of the persons by whom he was bound, and with the consent of the apprentice himself, and not otherwise, assign such apprentice to any other person who is willing to take him for the residue of the term mentioned in the contract of apprenticeship, and subject to the conditions thereof, provided that such person shall, by endorsement under his own hand on each copy of the contract, declare his acceptance of such apprentice, and acknowledge himself bound by the agreements and covenants therein mentioned to be performed on the part of the master, and that the consent of the other parties aforesaid shall be expressed in writing on the same, and signed by them respectively; and that such assignment shall be registered in the office where the contract was first registered, or in that of the chief magistrate of the district where the apprentice shall have been last employed.

18. And it is hereby enacted, that upon complaint made to any magistrate in the said territories, by or on behalf of any apprentice bound under this Act, of misusage,

misusage, or of refusal or neglect to provide for him, or to give him instruction, according to the contract of apprenticeship, or of cruelty or other ill-treatment by his master, or by the agent under whom he shall have been placed by his master, if it shall appear to the magistrate that there is cause for the complaint, it shall be lawful for him to summon the master or his agent, as the case may be, if he shall be within his jurisdiction, to appear before him at a reasonable time, to be stated in the summons, to answer the complaint, and at such time, whether the master or his agent be present or not (service of the summons being proved), to examine into the matter of the complaint, and upon proof thereof, to impose upon the offender, whether he shall be the master or his agent, a reasonable fine, not exceeding 200 rupees, and if the offender shall not pay the fine, to levy the same by distress and sale of his goods and chattels, and in case the offender shall not be the master, but his agent, by distress and sale of the goods and chattels of the master also, and if there shall not be found sufficient goods and chattels whereon to levy the same, to commit the offender to prison until the fine shall be discharged, provided that he shall not be kept in prison for a period exceeding two months, and provided, that if sentence shall have been passed after an ex parte investigation, the offender shall not be committed to prison until he has been brought before the magistrate, and having been personally called upon to discharge the penalty, has failed to do so.

19. And it is hereby enacted, that in a case in which a magistrate shall have passed sentence upon the master of an apprentice or agent under the last section, it shall be lawful for him, at his discretion, to adjudge that the apprentice shall be discharged, and if any premium shall have been paid on the binding of such apprentice, to make an order upon the master to refund the whole or any part thereof; and in case the sum ordered to be refunded by such master shall not be paid to the person or persons directed in every such order to receive the same, to levy the same by distress upon the goods and chattels of such master, with the costs and charges of such distress, and if there shall not be found sufficient goods and chattels whereon to levy the same, to commit such master to prison for any term not exceeding two months, unless the sum ordered to be refunded, with all costs, shall be sooner paid and satisfied.

20. Provided that when the master of an apprentice shall have been committed to prison in default of payment of a fine imposed under section 18, the imprisonment to which he may be subjected under the last section, in default of payment of the sum ordered to be refunded, shall not extend beyond the time which, in addition to the term ordered under section 18, shall make up the period of three months.

21. And it is hereby enacted, that when a magistrate shall order the discharge of an apprentice under section 19, any sum that may be levid under section 18, together with the whole or a part of any sum that may be levied under section 19, shall be applied, at the discretion of the magistrate, for the purpose of binding or placing out the discharged apprentice with a new master, or otherwise for his use and benefit.

22. And it is hereby enacted, that upon complaint made by any master of an apprentice bound to him under this Act, or by his agent, against such apprentice, to any magistrate of any place or district in the said territories where such apprentice shall be employed, or in the case of a sea apprentice, where he shall be in the course of his employment, of any misdemeanor, misconduct or ill-behaviour of such apprentice; or if such apprentice shall have absconded, upon complaint made thereof by the master or his agent, to any magistrate of the place or district where such apprentice shall be found, or where he shall have been employed, it shall be lawful for any such magistrate in the latter case to issue his warrant for apprehending such apprentice, and in either case to hear and determine the complaint, and to punish the offender by committing him to a house of correction, or to prison, there to be held to hard labour for a reasonable time, not exceeding three months, or if the offender be a boy of such tender years as to make punishment in the way of school discipline more suitable, by inflicting on him corporal punishment, not exceeding 10 stripes with a light rattan; provided that it shall be lawful for the magistrate, instead of committing such offender to a house of correction, or to prison to be held to hard labour as aforesaid, to pass an order for his being kept in solitary confinement in any suitable place, in or out of prison, for a period not exceeding three weeks, or if the magistrate deem any such punishment unfitting, to pass an order to the master

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master of the apprentice, or his agent, to keep the offender in close confinement in his own house, or on board the vessel to which he may belong, upon a reduced diet, for a period not exceeding one month, and at his discretion to direct that at the expiration of the stated period the apprentice shall be again brought up before him, that he may satisfy himself that he has been properly dealt with.

23. And it is hereby enacted, that it shall be lawful for the magistrate, on proof of wilful and continual misconduct on the part of the apprentice, whereby it shall appear that he is incorrigible, and on the demand of the master, to adjudge that the contract of apprenticeship shall be determined; provided that it shall be at the discretion of the magistrate, on a consideration of the circumstances, to order the refund of a part of any premium that may have been paid to the master on binding such apprentice, to the person or persons by whom it was paid on behalf of such apprentice.

24. Provided always, that no magistrate shall entertain a complaint on the part of a master against an apprentice, under this Act, unless it be preferred within one month after the cause of complaint shall have arisen, or if the cause of complaint shall have arisen on board a ship or vessel on a voyage, within one month after the arrival thereof at a port or place in the said territories; and that no magistrate shall entertain a complaint on the part of an apprentice against his master, or the agent of his master, under this Act, unless it be preferred within three months after the cause of complaint shall have arisen, or if the cause of complaint shall have arisen on board a ship or vessel on a voyage, within three months after the arrival thereof at a port or place in the said territories.

25. And it is hereby enacted, that if the master of any apprentice shall die before the expiration of the term for which such apprentice shall have been bound, the contract of apprenticeship shall be considered as determined; provided that if any premium shall have been paid to such master on the binding of the apprentice to him, a proportionate part thereof shall be returned by the executors or administrators, out of the estate of the deceased, to the person or persons who shall have paid the same, to be employed by such person or persons towards the binding out such apprentice to a new master, unless the executor or administrator of the deceased master, or some member of his family living with him at the time of his death, shall continue the business in which such apprentice shall have been employed, and shall, within three months from the decease of the late master, make offer in writing to retain the apprentice on the terms of the original contract, in which case the estate of the deceased shall be discharged from all liability on account of such premium.

26. And it is hereby enacted, that if such offer to retain the apprentice shall be made as aforesaid, and shall be consented to by such apprentice, and the person or persons by whom he shall have been bound, the same shall be fully expressed and certified on each copy of the original contract of apprenticeship, with the signatures of the parties respectively, and such certificate shall be registered in the office of the chief magistrate of the place or district where such apprentice shall have been employed, or in the case of a sea apprentice, in the office in which the original contract shall have been registered, and the apprentice shall be considered as bound to the person or persons so retaining him for the remaining part of the term specified in the said contract.

27. Provided always, that if the master of any apprentice bound under this Act shall die during the term of apprenticeship, such apprentice shall be entitled to maintenance for three months from and after the decease of his master, out of the assets left by him, provided that during such three months such apprentice shall continue to live with and serve as an apprentice the executor or administrator of such master, or of such person as he shall appoint.

28. And it is hereby enacted, that when a commission of bankruptcy shall be issued against any person to whom an apprentice shall have been bound under this Act, or when such person shall be adjudged to have committed an act of insolvency, such apprentice shall be discharged from all obligation under the contract of apprenticeship, provided that if any premium shall have been paid on binding him as an apprentice, the person or persons by whom he shall have been bound shall be entitled to claim a proportionate part thereof as a debt against the estate of the bankrupt or insolvent.

29. And it is hereby enacted, that when application shall be made to a magistrate, or other registering officer for the registration of an original contract of apprenticeship under section 10, or of a certificate of the consent of parties to the

the removal of an apprentice from the place at which he was originally bound to serve, or to any other alteration of the contract under section 14, or of a certificate of the transfer of a sea apprentice from one vessel to another under section 15, or of a certificate of the consent of parties to the determination of a contract of apprenticeship under section 16, or to the assignment of an apprentice under section 17, or to the retaining of an apprentice after the death of the master to whom he was bound, by the executor or administrator, or a member of the family of the deceased, under section 25, without which registration such acts respectively shall not be valid; it shall be at the discretion of the magistrate or officer to call for the attendance of the parties before him, to attest the contract or certificate, provided that on every such occasion the magistrate or officer shall require the apprentice to be brought before him, whether the other parties shall be required to attend in person or not; and provided that whenever any such registration shall be made, a certificate of the registration shall be made on each copy of the contract, and signed by the magistrate or other registering officer.

30. And it is hereby enacted, that for the purpose of this Act, all British subjects, as well as other persons in the territories of the East India Company, without the local limits of the jurisdiction of Her Majesty's Supreme Courts, shall be amenable to the jurisdiction of the magistrates of the East India Company.

31. And it is hereby enacted, that from any sentence or order passed by any magistrate without the local limits aforesaid, an appeal shall lie to the Court of Session, to which such magistrate shall be subordinate, provided the appeal be made within one month from the date of the sentence or order.

32. And it is hereby enacted, that the words, "master," "person" and "he" in this Act, shall be understood to include several persons, as well as one person, and females as well as males, and bodies corporate as well as individuals, unless there be something in the context repugnant to such construction.

(signed) *C. H. Cameron.*
D. Eliott.

(True copies.)

East India House,
April 1845.

T. L. Peacock,
Examiner of Indian Correspondence.